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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AO10**

### Prevailing Rate Systems; Abolishment of the Special Wage Schedules for Ship Surveyors in Puerto Rico

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to abolish the special wage schedule pay plan practice previously established for nonsupervisory and supervisory ship surveyor positions in Puerto Rico. The Department of the Navy no longer has such positions in Puerto Rico. This change is based on a consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC).

**DATES:**

*Effective date:* This regulation is effective on March 5, 2021.

*Applicability date:* This change applies on the first day of the first applicable pay period beginning on or after April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mark Allen, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** On October 19, 2020, OPM issued a proposed rule (85 FR 66282) to abolish the special wage schedule pay plan practice previously used for nonsupervisory and supervisory ship surveyor positions in Puerto Rico because the schedule is no longer being used by the Department of the Navy. FPRAC, the national labor-management committee that advises OPM on Federal Wage System pay matters, reviewed and concurred by consensus with this change.

The 30-day comment period ended on November 18, 2020. OPM received one comment in support of the abolishment of the special wage schedule for ship surveyor positions and one comment that is beyond the scope of this rule.

Since there are no FWS employees remaining in the special wage schedule for ship surveyor positions, this final rule removes § 532.275 from title 5, Code of Federal Regulations.

**Regulatory Impact Analysis**

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule has not been designated as a ''significant regulatory action,'' under Executive Order 12866.

**Regulatory Flexibility Act**

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

**Civil Justice Reform**

This regulation meets the applicable standard set forth in Executive Order 12988.

**Unfunded Mandates Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Congressional Review Act**

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business ''Regulatory Enforcement Fairness Act of 1996'' (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**Paperwork Reduction Act**

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**§ 532.275 [Removed]**

■ 2. Remove § 532.275.

[FR Doc. 2021–04627 Filed 3–4–21; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 983

**[Doc. No. AMS–SC–20–0069; SC20–983–2 FR]**

### Pistachios Grown in California, Arizona, and New Mexico; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Administrative Committee for Pistachios (Committee) to increase the assessment rate established for the

2020–21 and subsequent production years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, California Marketing Field Office, or Andrew Hatch, Deputy Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538–1670 or Email: *PeterR.Sommers@usda.gov* or *Andrew.Hatch@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 983, as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico. Part 983 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of pistachios operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, pistachio handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable pistachios for the 2020–21 production year and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from $0.00010 per pound of assessed weight pistachios, the rate that was established for the 2017–18 and subsequent production years, to $0.00015 per pound of assessed weight pistachios for the 2020–21 and subsequent production years.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2017–18 and subsequent production years, the Committee recommended, and USDA approved, an assessment rate of $0.00010 per pound of assessed weight pistachios. That assessment rate continued until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 14, 2020, and unanimously recommended expenditures of $679,800 and an assessment rate of $0.00015 per pound of assessed weight pistachios handled for the 2020–21 and subsequent production years. In comparison, last year's budgeted expenditures were $677,100. The assessment rate of $0.00015 is $0.00005 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide adequate income, along with California Pistachio Research Board (CPRB) management income and reserve funds, to cover the Committee's budgeted expenses for the 2020–21 production year. Funds in the reserve are expected to be approximately $197,585 at the end of the 2020–21 production year, which is within the Order's requirement of carryover funds no more than approximately two production years' budgeted expenses.

The major expenditures recommended by the Committee for the 2020–21 production year include $74,800 for various administrative expenses, $10,000 for compliance expenses, $346,500 for salaries and related employee expenses, $125,000 for research, and $80,000 for a contingency fund. Budgeted expenses for these items for the 2019–20 production year were $48,900, $10,000, $336,500, $125,000, and $80,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 950 million pounds of assessed weight pistachios, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $142,500 (950,000,000 pounds assessed weight pistachios multiplied by $0.00015 assessment rate), along with CPRB management income ($175,200), and funds from the Committee's authorized reserve ($559,685), will be adequate to cover budgeted expenses of $679,800. Funds in the reserve are estimated to be $197,585 at the end of the 2020–21 production year ($142,500 in assessment income plus $175,200 from CPRB management income plus $559,685 from the Committee's reserves minus $679,800 in Committee estimated expenses equals $197,585 remaining in the reserve fund).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each production year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020–21 production year budget, and those for subsequent

production years, will be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 21 handlers subject to the regulation under the Order, and approximately 1,501 producers of pistachios in the production area. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for pistachios for the 2018 production year was $2.65 per pound. Committee data indicates 2018–19 pistachio total production was 746,858,150 pounds. The total 2018 value of the pistachio crop was $1,979,174,098 (746,858,150 pounds times $2.65 per pound). Dividing the crop value by the estimated number of producers (1,501) yields an estimated average receipt per producer of $1,318,570 which is above the SBA threshold for small producers.

According to USDA Market News data, the reported terminal price for 2018 for pistachios ranged between $155.00 to $165.00 per 25-pound carton. The average of this range is $160.00 ($155.00 plus $165.00 divided by 2). Dividing the average value by the 25-pound carton yields an estimated average price per pound of $6.40 ($160.00 average value for 25-pound carton divided by 25). Multiplying the 2018–19 pistachio total production of 746,858,150 pounds by the estimated average price per pound of $6.40 equals $4,779,892,160.

Dividing this figure by 21 regulated handlers yields estimated average annual handler receipts of $227,613,912, which is also above the SBA threshold for small agricultural service firms. Therefore, using the above data, and assuming a normal distribution, the majority of producers and handlers of pistachios may be classified as large entities.

The assessment rate of $0.00015 that the committee recommended complies with section 983.71(b) of the Order which states that any assessment rate must not exceed one-half of one percent of the average price received by producers in the preceding production year. The average price received by producers in the preceding production year was $2.65 per pound of pistachios. Thus, $2.65 times 0.5 percent equals $0.01325, which is greater than the assessment rate increase of $0.00015.

This rule increases the assessment rate collected from handlers for the 2020–21 and subsequent production years from $0.00010 to $0.00015 per pound assessed weight pistachios. The Committee unanimously recommended 2020–21 expenditures of $679,800 and an assessment rate of $0.00015 per pound assessed weight pistachios. The assessment rate of $0.00015 per pound assessed weight pistachios is $0.00005 higher than the rate currently in effect. The volume of assessable pistachios for the 2020–21 production year is estimated at 950 million pounds. Thus, the $0.00015 per pound assessed weight pistachios should provide $142,500 in assessment income (950,000,000 pounds assessed weight pistachios multiplied by $0.00015 assessment rate). Income derived from handler assessments, along with CPRB management income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses for the 2020–21 production year.

The major expenditures recommended by the Committee for the 2020–21 production year include $74,800 for various administrative expenses, $10,000 for compliance expenses, $346,500 for salaries and related employee expenses, $125,000 for research, and $80,000 for a contingency fund. Budgeted expenses for these items in the 2019–20 production year were $48,900, $10,000, $336,500, $125,000, and $80,000 respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to provide income to partially cover the Committee's budgeted expenses for the 2020–21 production year while maintaining its financial reserve within the limit required by the Order.

Prior to arriving at this budget and assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.00010 per pound assessed weight pistachios, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate will fund budgeted expenses and avoid drawing down reserves at an unsustainable rate.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the pistachio industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the July 14, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0215, Pistachios Grown in California, Arizona, and New Mexico. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on October 5, 2020 (85 FR 62615). The Committee notified all pistachio handlers of the proposed

assessment rate increase. The proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 45-day comment period ending November 19, 2020, was provided for interested persons to respond to the proposal. Two comments were received. One favored the increased assessment rate, and the other was not pertinent to the rule.

The commenter supportive of the assessment rate increase felt that this action was within the agency's rulemaking power. The comment stated that the Committee determined that the assessment rate would help with some of the financial necessities, but would not significantly decrease the amount in the reserve fund. The second comment received was not pertinent to the proposal and did not address the merits of this action.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 983**

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

## PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 983.253 is revised to read as follows:

**§ 983.253 Assessment rate.**

On and after September 1, 2020, an assessment rate of $0.00015 per pound is established for California, Arizona, and New Mexico pistachios.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–04599 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–1111; Product Identifier MCAI–2020–01374–T; Amendment 39–21442; AD 2021–04–20]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2018–24–03, which applied to all Dassault Aviation Model Falcon 10 airplanes. AD 2018–24–03 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 4, 2019 (83 FR 61523, November 30, 2018).

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Dassault Aviation service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1111.

**Examining the AD Docket**

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1111; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0215, dated October 6, 2020 (EASA AD 2020–0215) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Dassault Aviation Model Falcon 10 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–24–03, Amendment 39–19507 (83 FR 61523, November 30, 2018) (AD 2018–24–03). AD 2018–24–03 applied to all Dassault Aviation Model Falcon 10 airplanes. The NPRM published in the **Federal Register** on December 7, 2020 (85 FR 78808). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as

applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2020–0215.

The FAA is issuing this AD to address among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

**Comments**

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Related Service Information Under 1 CFR part 51**

EASA AD 2020–0215 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires Section 5–40–00, Airworthiness Limitations, Revision 13, dated July 2017, of the Dassault Falcon 10 Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of January 4, 2019 (83 FR 61523, November 30, 2018).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 60 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–24–03 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2018–24–03, Amendment 39–19507 (83 FR 61523, November 30, 2018); and

■ b. Adding the following new AD:

**2021–04–20 Dassault Aviation:** Amendment 39–21442; Docket No. FAA–2020–1111; Product Identifier MCAI–2020–01374–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective April 9, 2021.

**(b) Affected ADs**

This AD replaces AD 2018–24–03, Amendment 39–19507 (83 FR 61523, November 30, 2018) (AD 2018–24–03).

**(c) Applicability**

This AD applies to all Dassault Aviation Model Falcon 10 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Retained Maintenance or Inspection Program Revision, with No Changes.**

This paragraph restates the requirements of paragraph (g) of AD 2018–24–03, with no changes. Within 90 days after January 4, 2019 (the effective date of AD 2018–24–03), revise the existing maintenance or inspection program, as applicable, to incorporate Section 5–40–00, Airworthiness Limitations, Revision 13, dated July 2017, of the Dassault Falcon 10 Maintenance Manual (Section 5–40–00). The initial compliance time for accomplishing the actions is at the applicable time specified in Section 5–40–00; or within 90 days after January 4, 2019; whichever occurs later.

**(h) Retained Restrictions on Alternative Actions and Intervals With a New Exception.**

This paragraph restates the requirements of paragraph (h) of AD 2018–24–03, with a new exception. Except as required by paragraph

(i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

**(i) New Maintenance or Inspection Program Revision**

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0215, dated October 6, 2020 (EASA AD 2020–0215). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

**(j) Exceptions to EASA AD 2020–0215**

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0215 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0215 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0215 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0215 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0215, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0215 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0215 does not apply to this AD.

**(k) New Provisions for Alternative Actions and Intervals**

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0215.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(m) Related Information**

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

**(n) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on April 9, 2021.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0215, dated October 6, 2020.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 4, 2019 (83 FR 61523, November 30, 2018).

(i) Section 5–40–00, Airworthiness Limitations, Revision 13, dated July 2017, of the Dassault Falcon 10 Maintenance Manual.

(ii) [Reserved]

(5) For EASA AD 2020–0215, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(6) For Dassault Aviation service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.*

(7) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1111.

(8) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 11, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–04340 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–1106; Project Identifier MCAI–2020–01065–T; Amendment 39–21435; AD 2021–04–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and A350–1041 airplanes. This AD was prompted by reports that suitable corrosion protection treatment had not been applied to certain areas of the seat track. This AD requires a one-time detailed inspection of the seat tracks between certain frames for suitable corrosion protection or presence of corrosion, and on-condition actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 9, 2021.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for

and locating Docket No. FAA–2020–1106.

**Examining the AD Docket**

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1106; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

**Background**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0166, dated July 27, 2020 (EASA AD 2020–0166) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and A350–1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and A350–1041 airplanes. The NPRM published in the **Federal Register** on December 4, 2020 (85 FR 78279). The NPRM was prompted by reports that suitable corrosion protection treatment had not been applied to certain areas of the seat track. The NPRM proposed to require a one-time detailed inspection of the seat tracks between certain frames for suitable corrosion protection or presence of corrosion, and on-condition actions if necessary, as specified in EASA AD 2020–0166.

The FAA is issuing this AD to address a potential structural deficiency at certain seat track locations, providing insufficient resistance to environmental damage. This condition, if not addressed, could lead to seat or monument detachment during an emergency landing, possibly resulting in injury to occupants and preventing safe evacuation from the airplane. See the MCAI for additional background information.

**Comments**

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

**Clarification of Terminology**

The FAA has added paragraph (h)(3) to this AD to clarify the definition of ''deficiencies,'' which is used in EASA AD 2020–0166 but is not referred to in the service information referenced in EASA AD 2020–0166.

**Conclusion**

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2020–0166 describes procedures for a one-time detailed inspection of the seat tracks between certain frames for suitable corrosion protection or presence of corrosion, and on-condition actions if necessary. On-condition actions include applying protection, removing corrosion, measuring the dimensions of the seat rails, and performing a splice repair.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 14 work-hours × $85 per hour = $1,190 | $0 | $1,190 | $5,950 |

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 6 work-hours × $85 per hour = $510 | $0 | $510 |

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2021–04–14 Airbus SAS:** Amendment 39–21435; Docket No. FAA–2020–1106; Project Identifier MCAI–2020–01065–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective April 9, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0166, dated July 27, 2020 (EASA AD 2020–0166).

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Reason**

This AD was prompted by reports that suitable corrosion protection treatment had not been applied to certain areas of the seat track. The FAA is issuing this AD to address a potential structural deficiency at certain seat track locations, providing insufficient resistance to environmental damage. This condition, if not addressed, could lead to seat or monument detachment during an emergency landing, possibly resulting in injury to occupants and preventing safe evacuation from the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0166.

**(h) Exceptions to EASA AD 2020–0166**

(1) Where EASA AD 2020–0166 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0166 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2020–0166 refers to ''deficiencies,'' for this AD deficiencies include unsuitable corrosion protection or presence of corrosion.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2020–0166 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email *kathleen.arrigotti@faa.gov.*

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0166, dated July 27, 2020 (EASA AD 2020–0166).

(ii) [Reserved]

(3) For EASA AD 2020–0166, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1106.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration

(NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 9, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–04350 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0132; Project Identifier MCAI–2020–00947–E; Amendment 39–21466; AD 2021–05–22]**

**RIN 2120–AA64**

## Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.), Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Safran Helicopter Engines, S.A. (Safran Helicopter Engines) Arriel 1B, Arriel 1C, Arriel 1C2, Arriel 1D1, Astazou XIV B, and Astazou XIV H model turboshaft engines. This AD was prompted by the detection of positive segregation (freckles) on Stage 2 high-pressure turbine (HPT) disks and Stage 3 turbine wheels. This AD requires removal from service of certain Stage 2 HPT disks for Safran Helicopter Engines Arriel 1B, 1C, 1C2, and 1D1 model turbofan engines and affected Stage 3 turbine wheels for Safran Helicopter Engines Astazou XIV B and XIV H model turbofan engines. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 22, 2021.

The FAA must receive comments on this AD by April 19, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Safran Helicopter Engines, S.A., Avenue du 1er Mai, Tarnos, France; phone: +33 (0) 5 59 74 45 11. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0132.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0132; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for the Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0151–E, dated July 9, 2020, for Safran Helicopter Engines Arriel 1B, Arriel 1C, Arriel 1C2, and Arriel 1D1 model turboshaft engines, and AD 2020–0161–E, dated July 17, 2020, for Safran Helicopter Engines Astazou XIV B and Astazou XIV H model turboshaft engines to address an unsafe condition for the specified products. EASA AD 2020–0151–E states:

> Positive segregation (freckles) was detected on Stage 2 HP turbine discs manufactured from a certain block of material. Other parts manufactured from that same block of material may also be affected by this non-conformity.
>
> This condition, if not corrected, could lead to HP turbine disc failure and result in high-energy debris release, with consequent damage to, and reduced control of, the helicopter.
>
> To address this unsafe condition, SAFRAN issued the MSB, as defined in this [EASA] AD, to identify affected HP turbine discs and provide instructions for replacement.
>
> For the reason described above, this [EASA] AD requires replacement of affected parts with serviceable parts, and prohibits re-installation of affected parts.

EASA AD 2020–0161–E states:

> Positive segregation (freckles) was detected on Stage 3 turbine wheels manufactured from a certain block of material. Other parts manufactured from that same block of material may also be affected by this non-conformity.
>
> This condition, if not corrected, could lead to turbine wheel failure and result in high-energy debris release, with consequent damage to, and reduced control of, the helicopter.
>
> To address this unsafe condition, SAFRAN issued the MSB, as defined in this [EASA] AD, to identify affected turbine wheels and provide instructions for replacement.
>
> For the reason described above, this [EASA] AD requires replacement of affected parts with serviceable parts, and prohibits re-installation of affected parts.

You may obtain further information by examining the MCAIs in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0132.

### FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI. The FAA is issuing this AD because the agency evaluated all the relevant information provided by EASA and has determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Related Service Information

The FAA reviewed Safran Mandatory Service Bulletin (MSB) 292 72 0860, Version A, dated July 9, 2020 (MSB 292 72 0860). MSB 292 72 0860 identifies affected Stage 2 HPT disks and describes procedures for removing and replacing affected Stage 2 HPT disks on Safran Helicopter Engines Arriel 1B, Arriel 1C, Arriel 1C2, and Arriel 1D1 model turbofan engines. The FAA also reviewed Safran MSB 283 72 0814, Version A, dated July 16, 2020 (MSB 283 72 0814). MSB 283 72 0814 describes procedures for replacing the Stage 3 turbine wheel on Safran Helicopter Engines Astazou XIV B and Astazou XIV H model turbofan engines.

### AD Requirements

This AD requires the removal from service and replacement of affected Stage 2 HPT disks for Safran Helicopter Engines Arriel 1B, Arriel 1C, Arriel 1C2, and Arriel 1D1 model turbofan engines.

This AD also requires the removal from service and replacement of each affected Stage 3 turbine wheel for Safran Helicopter Engines Astazou XIV B and Astazou XIV H model turbofan engines.

**Differences Between This AD and the MCAI or Service Information**

EASA AD 2020–0161–E requires operators to use Safran Helicopter Engines service information to perform the removal and replacement of affected Stage 2 HPT disks while this AD does not.

**Justification for Immediate Adoption and Determination of the Effective Date**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

**Comments Invited**

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2021–0132 and Project Identifier MCAI–2020–00947–E at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

**Costs of Compliance**

The FAA estimates that this AD affects 0 engines installed on helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace Stage 2 HPT disk | 50 work-hours × $85 per hour = $4,250 | $30,000 | $34,250 | $0 |
| Replace Stage 3 turbine wheel | 50 work-hours × $85 per hour = $4,250 | 237,000 | 241,250 | 0 |

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2021–05–22 Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.):** Amendment 39–21466; Docket No. FAA–2021–0132; Project Identifier MCAI–2020–00947–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective March 22, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Safran Helicopter Engines (Type Certificate previously held by Turbomeca, S.A.):

(1) Arriel 1B, Arriel 1C, Arriel 1C2, and Arriel 1D1 model turboshaft engines with a Stage 2 HPT disk part number (P/N) 0292250400 and serial number (S/N) J915AD, J918AD, J919AD, J921AD, J923AD, J924AD, J926AD or J927AD, installed; and

(2) Astazou XIV B and Astazou XIV H model turboshaft engines with a Stage 3 turbine wheel P/N 0256257050 and S/N J276AD, J278AD, J279AD, J281AD, J282AD, J283AD or J287AD, installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by the detection of positive segregation (freckles) on Stage 2 high-pressure turbine (HPT) disks and Stage 3 turbine wheels manufactured from a certain block of material. The FAA is issuing this AD to prevent failure of the HPT disk. The unsafe condition, if not addressed, could result in failure of the Stage 2 HPT disk and Stage 3 turbine wheels, uncontained release of these parts, damage to the helicopter, and reduced control of the helicopter.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

(1) For affected Safran Helicopter Engines Arriel 1B, Arriel 1C, Arriel 1C2 and Arriel 1D1 model turboshaft engines, within 25 flight hours (FHs) after the effective date of this AD, remove from service the Stage 2 HPT disk and replace with a part that is eligible for installation.

(2) For affected Safran Helicopter Engines Astazou XIV B and Astazou XIV H model turboshaft engines, within 25 FHs after the effective date of this AD, remove from service the Stage 3 turbine wheel and replace with a part that is eligible for installation.

**(h) Definitions**

(1) For the purpose of this AD, a part eligible for installation on Safran Helicopter Engines Arriel 1B, Arriel 1C, Arriel 1C2, and Arriel 1D1 model turboshaft engines is a Stage 2 HPT disk that does not have P/N 0292250400 and S/N J915AD, J918AD, J919AD, J921AD, J923AD, J924AD, J926AD or J927AD.

(2) For the purpose of this AD, a part that is eligible for installation on Safran Helicopter Engines Astazou XIV B and Astazou XIV H model turboshaft engines is a Stage 3 turbine wheel that does not have P/N 0265257050 and S/N J276AD, J278AD, J279AD, J281AD, J282AD, J283AD, or J287AD.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in Related Information. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(j) Related Information**

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0151–E, dated July 9, 2020, and EASA AD 2020–0161–E, dated July 17, 2020, for more information. You may examine the EASA ADs in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0132.

**(k) Material Incorporated by Reference**

None.

Issued on February 26, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–04454 Filed 3–4–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0133; Project Identifier AD–2021–00234–T; Amendment 39–21469; AD 2021–06–03]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 777F series airplanes. This AD was prompted by a report of a water supply line that detached at a certain joint located above an electronic equipment (EE) cooling filter, leading to water intrusion into the forward EE bay. This AD requires deactivating the potable water system. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 5, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 5, 2021.

The FAA must receive comments on this AD by April 19, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this

material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0133.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0133; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Courtney Kronenberger, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.A.Kronenberger@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA has received a report of a water supply line that detached above an EE cooling filter, leading to water intrusion into the forward EE bay, on a Model 777F series airplane with 34,000 total flight hours and 6,000 total flight cycles.

During potable water servicing on ground, the operator received multiple messages appearing on the engine indication and crew alert system (EICAS) indicating multiple affected EE line replaceable units (LRUs). Further investigation revealed that the location of a joint on a swaged end fitting ferrule of a corrosion resistant stainless steel (CRES) water supply line had become partially or fully detached from the tube, causing water to spill onto an EE cooling filter (directly below the fitting) in the left-hand sidewall at station (STA) 571. The amount and duration of the water spillage are unknown. The cooling filter became saturated with the water, which was then blown via the EE cooling system into multiple EE LRUs located in the EE bay.

Water that has been ingested or has entered into the EE cooling system via the cooling filter can be circulated to multiple EE racks and can accumulate on the LRUs, particularly where forced air cooling occurs. Water ingress to these LRUs can affect multiple EE bay racks and LRUs, resulting in loss of functionality or inaccurate output of critical electrical systems and possible loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

Model 777F series airplanes line numbers (L/Ns) 960 and subsequent have a joint at this location from the factory-installed CRES tube assembly. Boeing released Service Bulletin 777–38–0042 as an economic service bulletin providing operators with airplanes prior to L/N 960 instructions to retrofit to this configuration at their discretion. Therefore, this AD will require deactivation of the potable water system for all 777F with this joint installed either in production or through performance of Boeing SB 777–38–0042.

**FAA's Determination**

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing MOM–MOM–21–0089–01B, dated February 26, 2021. This service information specifies procedures for deactivating the potable water system. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**AD Requirements**

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD and the Service Information.'' This AD also prohibits the future accomplishment of the actions specified in Boeing Service Bulletin 777–38–0042.

**Difference Between This AD and the Service Information**

Boeing MOM–MOM–21–0089–01B, dated February 26, 2021, specifies one Safety Action and six Recommended Actions. Although the FAA recommends accomplishment of all of these actions, this AD requires only deactivation of the potable water system, as specified in the Safety Action of the service information.

**Interim Action**

The FAA considers this AD to be an interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

**Justification for Immediate Adoption and Determination of the Effective Date**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because water that has entered the EE cooling system via the cooling filter can affect multiple EE bay racks and LRUs, resulting in loss of functionality or inaccurate output of critical electrical systems and possible loss of control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

**Comments Invited**

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2021–0133 and Project Identifier AD–2021–00234–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report

summarizing each substantive verbal contact received about this final rule.

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Courtney Kronenberger, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.A.Kronenberger@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

**Costs of Compliance**

The FAA estimates that this AD affects 58 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Deactivation of potable water system ..... | 2 work-hours × $85 per hour = $170 ..... | $0 | $170 | $9,860 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2021–06–03 The Boeing Company:** Amendment 39–21469; Docket No. FAA–2021–0133; Project Identifier AD–2021–00234–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective March 5, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 777F series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 38, Water/waste.

**(e) Unsafe Condition**

This AD was prompted by a report of a water supply line that detached above an electronic equipment (EE) cooling filter, leading to water intrusion into the forward EE bay. The FAA is issuing this AD to address water entering the EE cooling system via the cooling filter, which can affect multiple EE bay racks and line replaceable units (LRUs), resulting in loss of functionality or inaccurate output of critical electrical systems and possible loss of control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Deactivation of Potable Water System**

For the airplanes identified in paragraphs (g)(1) and (2) of this AD: Within 5 days after the effective date of this AD, deactivate the potable water system, in accordance with Boeing Multi Operator Message MOM–MOM–21–0089–01B, dated February 26, 2021 (MOM–MOM–21–0089–01B).

(1) Line numbers (L/Ns) 959 and earlier on which the actions specified in Boeing Service Bulletin 777–38–0042 have been accomplished.

(2) L/Ns 960 and subsequent.

Note 1 to paragraph (g): Guidance on deactivating the potable water system can be found in Boeing 777 Aircraft Maintenance Manual (AMM) Task 38–10–00–040–801.

**(h) Installation Prohibition**

For airplanes not identified in paragraph (g) of this AD: As of the effective date of this AD, accomplishment of the actions specified in Boeing Service Bulletin 777–38–0042 is prohibited.

**(i) Reporting Provisions**

Although Boeing MOM–MOM–21–0089–01B specifies to report inspection findings, this AD does not require any report.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(k) Related Information**

For more information about this AD, contact Courtney Kronenberger, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.A.Kronenberger@faa.gov.*

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Multi Operator Message MOM–MOM–21–0089–01B, dated February 26, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 2, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–04713 Filed 3–3–21; 11:15 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31358; Amdt. No. 3946]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2021.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on February 19, 2021.

**Wade Terrell,**

*Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject. |
|---|---|---|---|---|---|---|
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5582 | 12/16/20 | This NOTAM, published in Docket No. 31356, Amdt No. 3944, TL 21–07, is hereby rescinded in its entirety. |
| 25–Mar–21 | IA | Red Oak | Red Oak Muni | 1/0041 | 2/3/21 | RNAV (GPS) RWY 5, Amdt 1B. |
| 25–Mar–21 | IA | Red Oak | Red Oak Muni | 1/0043 | 2/3/21 | VOR/DME–A, Amdt 5. |
| 25–Mar–21 | MN | Madison | Lac Qui Parle County | 1/0099 | 2/4/21 | RNAV (GPS) RWY 14, Orig-B. |
| 25–Mar–21 | CA | Santa Ynez | Santa Ynez | 1/0179 | 2/3/21 | VOR OR GPS–B, Amdt 7E. |
| 25–Mar–21 | OR | La Grande | La Grande/Union County | 1/0225 | 2/3/21 | RNAV (GPS) RWY 16, Orig-B. |
| 25–Mar–21 | NY | Westhampton Beach | Francis S Gabreski | 1/0235 | 2/3/21 | TACAN RWY 24, Orig-B. |
| 25–Mar–21 | NY | Westhampton Beach | Francis S Gabreski | 1/0236 | 2/3/21 | TACAN RWY 6, Orig-B. |
| 25–Mar–21 | NY | Westhampton Beach | Francis S Gabreski | 1/0237 | 2/3/21 | RNAV (GPS) RWY 24, Amdt 2B. |
| 25–Mar–21 | NY | Westhampton Beach | Francis S Gabreski | 1/0238 | 2/3/21 | RNAV (GPS) RWY 6, Amdt 2B. |
| 25–Mar–21 | NY | Syracuse | Syracuse Hancock Intl | 1/0254 | 2/4/21 | RNAV (GPS) Z RWY 28, Amdt 2C. |
| 25–Mar–21 | NY | Syracuse | Syracuse Hancock Intl | 1/0258 | 2/4/21 | VOR RWY 15, Amdt 23B. |
| 25–Mar–21 | PA | Myerstown | Deck | 1/0260 | 2/3/21 | RNAV (GPS) RWY 19 , Orig-C. |
| 25–Mar–21 | VA | Bumpass | Lake Anna | 1/0261 | 2/3/21 | RNAV (GPS) RWY 26, Orig-A. |
| 25–Mar–21 | VA | Bumpass | Lake Anna | 1/0263 | 2/3/21 | RNAV (GPS) RWY 8, Orig-A. |
| 25–Mar–21 | NY | Fulton | Oswego County | 1/0279 | 2/4/21 | RNAV (GPS) RWY 15, Orig-C. |
| 25–Mar–21 | IL | Savanna | Tri-Township | 1/0280 | 2/4/21 | VOR–A, Orig-B. |
| 25–Mar–21 | TX | Marshall | Harrison County | 1/0281 | 2/5/21 | VOR/DME–A, Amdt 4E. |
| 25–Mar–21 | MO | Branson | Branson | 1/0284 | 2/3/21 | RNAV (GPS) RWY 32, Orig-A. |
| 25–Mar–21 | NC | Erwin | Harnett Rgnl Jetport | 1/0314 | 2/4/21 | NDB RWY 23, Amdt 2A. |
| 25–Mar–21 | VA | Luray | Luray Caverns | 1/0315 | 2/5/21 | NDB–A, Amdt 7A. |
| 25–Mar–21 | VA | Luray | Luray Caverns | 1/0317 | 2/5/21 | RNAV (GPS) RWY 22, Amdt 1B. |
| 25–Mar–21 | VA | Luray | Luray Caverns | 1/0319 | 2/5/21 | RNAV (GPS) RWY 4, Orig-B. |
| 25–Mar–21 | VA | Luray | Luray Caverns | 1/0321 | 2/5/21 | VOR/DME–B, Amdt 3A. |
| 25–Mar–21 | TX | Sonora | Sonora Muni | 1/0457 | 2/4/21 | NDB OR GPS RWY 18, Amdt 3. |
| 25–Mar–21 | LA | Hammond | Hammond Northshore Rgnl | 1/0584 | 2/5/21 | RNAV (GPS) RWY 18, Amdt 1. |
| 25–Mar–21 | LA | Hammond | Hammond Northshore Rgnl | 1/0586 | 2/5/21 | RNAV (GPS) RWY 31, Amdt 1. |
| 25–Mar–21 | LA | Hammond | Hammond Northshore Rgnl | 1/0588 | 2/5/21 | RNAV (GPS) RWY 36, Orig. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject. |
|---|---|---|---|---|---|---|
| 25–Mar–21 | MD | Salisbury | Salisbury-Ocean City Wicomico Rgnl. | 1/1268 | 2/9/21 | ILS OR LOC RWY 32, Amdt 8. |
| 25–Mar–21 | MD | Salisbury | Salisbury-Ocean City Wicomico Rgnl. | 1/1269 | 2/9/21 | RNAV (GPS) RWY 23, Amdt 1A. |
| 25–Mar–21 | MD | Salisbury | Salisbury-Ocean City Wicomico Rgnl. | 1/1270 | 2/9/21 | RNAV (GPS) RWY 5, Amdt 1. |
| 25–Mar–21 | MD | Salisbury | Salisbury-Ocean City Wicomico Rgnl. | 1/1271 | 2/9/21 | RNAV (GPS) RWY 32, Amdt 2. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1284 | 2/8/21 | ILS OR LOC RWY 14, Amdt 1A. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1285 | 2/8/21 | RNAV (GPS) RWY 14, Amdt 1A. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1286 | 2/8/21 | RNAV (GPS) RWY 18, Amdt 1A. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1287 | 2/8/21 | RNAV (GPS) RWY 32, Amdt 1A. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1288 | 2/8/21 | VOR RWY 14, Orig-D. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1289 | 2/8/21 | VOR/DME RWY 32, Amdt 1A. |
| 25–Mar–21 | LA | Alexandria | Alexandria Intl | 1/1290 | 2/8/21 | RNAV (GPS) RWY 36, Orig-B. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 1/1422 | 2/8/21 | VOR–F, Amdt 1A. |
| 25–Mar–21 | MN | Madison | Lac Qui Parle County | 1/1991 | 2/4/21 | RNAV (GPS) RWY 32, Orig-B. |
| 25–Mar–21 | IA | Red Oak | Red Oak Muni | 1/3255 | 2/3/21 | RNAV (GPS) RWY 17, Orig. |
| 25–Mar–21 | LA | Many | Hart | 1/4258 | 2/3/21 | RNAV (GPS) RWY 12, Orig-A. |
| 25–Mar–21 | IL | Cahokia/St Louis | St Louis Downtown | 1/5320 | 2/3/21 | RNAV (GPS) RWY 30R, Orig-B. |
| 25–Mar–21 | IL | Cahokia/St Louis | St Louis Downtown | 1/5321 | 2/3/21 | RNAV (GPS) RWY 30L, Orig-C. |
| 25–Mar–21 | IL | Cahokia/St Louis | St Louis Downtown | 1/5322 | 2/3/21 | RNAV (GPS) RWY 12R, Orig-C. |
| 25–Mar–21 | IL | Cahokia/St Louis | St Louis Downtown | 1/5323 | 2/3/21 | ILS OR LOC RWY 30L, Amdt 9C. |
| 25–Mar–21 | OH | Bowling Green | Wood County | 1/5357 | 2/4/21 | RNAV (GPS) RWY 28, Orig-D. |
| 25–Mar–21 | OH | Bowling Green | Wood County | 1/5358 | 2/4/21 | RNAV (GPS) RWY 10, Orig-E. |
| 25–Mar–21 | WI | Beloit | Beloit | 1/5364 | 2/4/21 | VOR–A, Amdt 5C. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5592 | 2/3/21 | VOR–A, Amdt 9A. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5593 | 2/3/21 | RNAV (GPS) RWY 29, Amdt 1B. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5594 | 2/3/21 | RNAV (GPS) RWY 17, Amdt 1B. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5595 | 2/3/21 | RNAV (GPS) RWY 11, Amdt 2B. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5596 | 2/3/21 | NDB RWY 17, Amdt 12A. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5597 | 2/3/21 | RNAV (GPS) RWY 35, Amdt 1B. |
| 25–Mar–21 | IL | Alton/St Louis | St Louis Rgnl | 1/5598 | 2/3/21 | ILS OR LOC RWY 29, Amdt 12C. |
| 25–Mar–21 | MI | Manistique | Schoolcraft County | 1/8558 | 2/4/21 | RNAV (GPS) RWY 10, Orig-A. |
| 25–Mar–21 | MI | Manistique | Schoolcraft County | 1/8560 | 2/4/21 | RNAV (GPS) RWY 28, Orig-A. |
| 25–Mar–21 | OH | Wooster | Wayne County | 1/9615 | 2/4/21 | VOR RWY 10, Amdt 1B. |
| 25–Mar–21 | FL | Jacksonville | Herlong Recreational | 1/9619 | 2/3/21 | NDB–A, Orig-B. |
| 25–Mar–21 | PA | Philadelphia | Philadelphia Intl | 1/9831 | 2/3/21 | RNAV (GPS) Y RWY 9L, Amdt 1B. |
| 25–Mar–21 | PA | Philadelphia | Philadelphia Intl | 1/9836 | 2/3/21 | ILS OR LOC RWY 9L, Amdt 4D. |
| 25–Mar–21 | PA | Philadelphia | Philadelphia Intl | 1/9838 | 2/3/21 | ILS Z OR LOC RWY 17, Amdt 8B. |
| 25–Mar–21 | PA | Philadelphia | Philadelphia Intl | 1/9840 | 2/3/21 | ILS OR LOC RWY 27R, Amdt 10H. |
| 25–Mar–21 | PA | Philadelphia | Philadelphia Intl | 1/9842 | 2/3/21 | RNAV (GPS) RWY 17, Amdt 3B. |
| 25–Mar–21 | KY | Owensboro | Owensboro-Daviess County Rgnl. | 1/9845 | 2/4/21 | RNAV (GPS) RWY 6, Amdt 1A. |
| 25–Mar–21 | KY | Owensboro | Owensboro-Daviess County Rgnl. | 1/9847 | 2/4/21 | RNAV (GPS) RWY 18, Amdt 2A. |
| 25–Mar–21 | KY | Owensboro | Owensboro-Daviess County Rgnl. | 1/9849 | 2/4/21 | RNAV (GPS) RWY 24, Amdt 2A. |
| 25–Mar–21 | KY | Owensboro | Owensboro-Daviess County Rgnl. | 1/9851 | 2/4/21 | RNAV (GPS) RWY 36, Amdt 4A. |
| 25–Mar–21 | PA | Bradford | Bradford Rgnl | 1/9901 | 2/3/21 | RNAV (GPS) RWY 14, Amdt 1C. |
| 25–Mar–21 | PA | Bradford | Bradford Rgnl | 1/9902 | 2/3/21 | RNAV (GPS) RWY 32, Amdt 1D. |
| 25–Mar–21 | NC | Wadesboro | Anson County—Jeff Cloud Fld | 1/9914 | 2/5/21 | RNAV (GPS) RWY 34, Amdt 2A. |
| 25–Mar–21 | MA | Boston | General Edward Lawrence Logan Intl. | 1/9915 | 2/3/21 | ILS OR LOC RWY 33L, Amdt 5D. |
| 25–Mar–21 | MA | Boston | General Edward Lawrence Logan Intl. | 1/9917 | 2/3/21 | RNAV (GPS) RWY 22L, Amdt 1C |

[FR Doc. 2021–04619 Filed 3–4–21; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31357; Amdt. No. 3945]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2021.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

**Lists of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 19, 2021.

**Wade Terrell,**

*Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 25 March 2021**

Asheville, NC, KAVL, LOC RWY 17, Orig, CANCELLED

**Effective 22 April 2021**

Cedartown, GA, 4A4, RNAV (GPS) RWY 10, Amdt 1
Cedartown, GA, 4A4, RNAV (GPS) RWY 28, Amdt 1
Cedartown, GA, Polk County Airport-Cornelius Moore Field, Takeoff Minimums and Obstacle DP, Amdt 2
Carbondale/Murphysboro, IL, KMDH, ILS OR LOC RWY 18L, Amdt 13A
Carbondale/Murphysboro, IL, KMDH, NDB RWY 18L, Amdt 13A
Carbondale/Murphysboro, IL, KMDH, RNAV (GPS) RWY 18L, Orig-A
Carbondale/Murphysboro, IL, KMDH, RNAV (GPS) RWY 36R, Orig-A
Anderson, IN, KAID, RNAV (GPS) RWY 12, Orig
Madison, IN, KIMS, RNAV (GPS) RWY 21, Orig
Wichita, KS, Wichita Dwight D Eisenhower National, RNAV (RNP) Z RWY 1L, Orig-D
Fitchburg, MA, Fitchburg Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Lapeer, MI, Dupont-Lapeer, Takeoff Minimums and Obstacle DP, Amdt 3B
Columbus, OH, KLCK, ILS OR LOC RWY 5R, ILS RWY 5R (SA CAT I), ILS RWY 5R (CAT II), Amdt 3D
Tulsa, OK, Tulsa Intl, RADAR–1, Amdt 18A
Dallas-Fort Worth, TX, KDFW, ILS RWY 18L (CONVERGING), Amdt 2C
Dallas-Fort Worth, TX, KDFW, ILS OR LOC RWY 18L, ILS RWY 18L (SA CAT I), ILS RWY 18L (SA CAT II), Amdt 3
Morgantown, WV, KMGW, RNAV (GPS) RWY 36, Amdt 2

[FR Doc. 2021–04623 Filed 3–4–21; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31356; Amdt. No. 3944]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2021.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff

Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on February 5, 2021.

**Wade Terrell,**

*Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 25–Mar–21 | KS | Chanute | Chanute Martin Johnson | 0/0011 | 12/16/20 | VOR–A, Amdt 10A. |
| 25–Mar–21 | KS | Chanute | Chanute Martin Johnson | 0/0014 | 12/16/20 | RNAV (GPS) RWY 36, Orig-C. |
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/0021 | 12/16/20 | ILS OR LOC RWY 13, Amdt 13B. |
| 25–Mar–21 | IL | Grayslake | Campbell | 0/0688 | 12/18/20 | RNAV (GPS)–B, Orig. |
| 25–Mar–21 | NM | Gallup | Gallup Muni | 0/0805 | 12/10/20 | RNAV (GPS) RWY 24, Orig-A. |
| 25–Mar–21 | MN | St Paul | Lake Elmo | 0/0992 | 12/17/20 | RNAV (GPS) RWY 32, Amdt 1A. |
| 25–Mar–21 | TX | Sweetwater | Avenger Field | 0/1334 | 12/18/20 | RNAV (GPS) RWY 35, Orig-A. |
| 25–Mar–21 | TX | Sweetwater | Avenger Field | 0/1342 | 12/18/20 | RNAV (GPS) RWY 22, Orig-A. |
| 25–Mar–21 | TX | Sweetwater | Avenger Field | 0/1343 | 12/18/20 | RNAV (GPS) RWY 4, Orig-A. |
| 25–Mar–21 | MN | Faribault | Faribault Muni-Liz Wall Strohfus Field. | 0/1514 | 12/16/20 | RNAV (GPS) RWY 30, Amdt 1D. |
| 25–Mar–21 | MN | Faribault | Faribault Muni-Liz Wall Strohfus Field. | 0/1515 | 12/16/20 | RNAV (GPS) RWY 12, Amdt 1C. |
| 25–Mar–21 | OH | Fremont | Fremont | 0/1526 | 12/18/20 | RNAV (GPS) RWY 9, Orig-B. |
| 25–Mar–21 | OK | Madill | Madill Muni | 0/1531 | 12/17/20 | RNAV (GPS) RWY 18, Orig-A. |
| 25–Mar–21 | MI | Niles | Jerry Tyler Memorial | 0/1533 | 12/17/20 | RNAV (GPS) RWY 33, Orig-B. |
| 25–Mar–21 | MI | Niles | Jerry Tyler Memorial | 0/1541 | 12/17/20 | VOR–A, Orig. |
| 25–Mar–21 | TX | Crosbyton | Crosbyton Muni | 0/1555 | 12/18/20 | RNAV (GPS) RWY 35, Orig-B. |
| 25–Mar–21 | MI | Boyne Falls | Boyne Mountain | 0/1571 | 12/18/20 | RNAV (GPS) RWY 17, Orig-A. |
| 25–Mar–21 | TX | Andrews | Andrews County | 0/1573 | 12/18/20 | RNAV (GPS) RWY 16, Orig. |
| 25–Mar–21 | MI | Drummond Island | Drummond Island | 0/1575 | 12/18/20 | RNAV (GPS) RWY 26, Orig-A. |
| 25–Mar–21 | MI | Drummond Island | Drummond Island | 0/1576 | 12/18/20 | RNAV (GPS) RWY 8, Orig-A. |
| 25–Mar–21 | UT | Beaver | Beaver Muni | 0/2331 | 12/14/20 | RNAV (GPS)–A, Orig-A. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3309 | 12/14/20 | VOR RWY 17, Amdt 24B. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3310 | 12/14/20 | VOR RWY 13, Amdt 19C. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3313 | 12/14/20 | RNAV (GPS) RWY 35, Amdt 1. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3316 | 12/14/20 | RNAV (GPS) RWY 13, Amdt 1. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3317 | 12/14/20 | ILS OR LOC RWY 35, Amdt 9G. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3318 | 12/14/20 | VOR/DME RWY 35, Amdt 15B. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3324 | 12/14/20 | VOR/DME RWY 31, Amdt 8A. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3350 | 12/14/20 | RNAV (GPS) RWY 31, Amdt 1. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3356 | 12/14/20 | RNAV (GPS) RWY 17, Amdt 1. |
| 25–Mar–21 | NE | Grand Island | Central Nebraska Rgnl | 0/3374 | 12/14/20 | LOC/DME BC RWY 17, Amdt 9E. |
| 25–Mar–21 | MO | Hannibal | Hannibal Rgnl | 0/3393 | 12/17/20 | RNAV (GPS) RWY 17, Orig. |
| 25–Mar–21 | MO | Hannibal | Hannibal Rgnl | 0/3394 | 12/17/20 | VOR/DME–A, Amdt 4. |
| 25–Mar–21 | MO | Hannibal | Hannibal Rgnl | 0/3395 | 12/17/20 | RNAV (GPS) RWY 35, Orig. |
| 25–Mar–21 | IL | Jacksonville | Jacksonville Muni | 0/3405 | 12/15/20 | RNAV (GPS) RWY 31, Orig-B. |
| 25–Mar–21 | IL | Jacksonville | Jacksonville Muni | 0/3406 | 12/15/20 | RNAV (GPS) RWY 22, Orig-B. |
| 25–Mar–21 | IL | Jacksonville | Jacksonville Muni | 0/3407 | 12/15/20 | RNAV (GPS) RWY 13, Orig-B. |
| 25–Mar–21 | IL | Jacksonville | Jacksonville Muni | 0/3408 | 12/15/20 | RNAV (GPS) RWY 4, Orig-B. |
| 25–Mar–21 | IL | Canton | Ingersoll | 0/4171 | 12/17/20 | RNAV (GPS) RWY 18, Amdt 1A. |
| 25–Mar–21 | IL | Canton | Ingersoll | 0/4172 | 12/17/20 | RNAV (GPS) RWY 36, Amdt 1B. |
| 25–Mar–21 | IL | Canton | Ingersoll | 0/4174 | 12/17/20 | VOR–A, Amdt 8. |
| 25–Mar–21 | TX | Ennis | Ennis Muni | 0/4184 | 12/22/20 | VOR/DME–A, Amdt 1. |
| 25–Mar–21 | MO | Dexter | Dexter Muni | 0/4186 | 12/17/20 | VOR/DME RWY 36, Amdt 6. |
| 25–Mar–21 | AL | Haleyville | Posey Field | 0/4198 | 12/10/20 | RNAV (GPS) RWY 36, Orig-C. |
| 25–Mar–21 | AL | Haleyville | Posey Field | 0/4199 | 12/10/20 | RNAV (GPS) RWY 18, Orig-C. |
| 25–Mar–21 | AR | Jonesboro | Jonesboro Muni | 0/4248 | 12/15/20 | RNAV (GPS) RWY 23, Amdt 1B. |
| 25–Mar–21 | AR | Jonesboro | Jonesboro Muni | 0/4249 | 12/15/20 | RNAV (GPS) RWY 5, Amdt 1B. |
| 25–Mar–21 | AR | Jonesboro | Jonesboro Muni | 0/4250 | 12/15/20 | ILS OR LOC RWY 23, Amdt 2B. |
| 25–Mar–21 | AR | Jonesboro | Jonesboro Muni | 0/4252 | 12/15/20 | VOR RWY 23, Amdt 11B. |
| 25–Mar–21 | AR | Jonesboro | Jonesboro Muni | 0/4253 | 12/15/20 | RNAV (GPS) RWY 31, Amdt 1B. |
| 25–Mar–21 | OH | Lancaster | Fairfield County | 0/4738 | 12/16/20 | VOR OR GPS–A, Amdt 10. |
| 25–Mar–21 | OH | Lancaster | Fairfield County | 0/4739 | 12/16/20 | RNAV (GPS) RWY 28, Amdt 1B. |
| 25–Mar–21 | OH | Lancaster | Fairfield County | 0/4765 | 12/16/20 | RNAV (GPS) RWY 10, Orig-A. |
| 25–Mar–21 | NM | Ruidoso | Sierra Blanca Rgnl | 0/5407 | 12/7/20 | RNAV (GPS) RWY 24, Orig-A. |
| 25–Mar–21 | NM | Ruidoso | Sierra Blanca Rgnl | 0/5409 | 12/7/20 | ILS OR LOC/DME RWY 24, Orig. |
| 25–Mar–21 | MI | Sturgis | Kirsch Muni | 0/5564 | 12/22/20 | RNAV (GPS) RWY 18, AMDT 1A. |
| 25–Mar–21 | MI | Sturgis | Kirsch Muni | 0/5565 | 12/22/20 | RNAV (GPS) RWY 36, Orig. |
| 25–Mar–21 | MI | Sturgis | Kirsch Muni | 0/5566 | 12/22/20 | NDB RWY 18, Amdt 5E. |
| 25–Mar–21 | MI | Sturgis | Kirsch Muni | 0/5567 | 12/22/20 | NDB RWY 24, Amdt 10C. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5582 | 12/16/20 | VOR–F, Amdt 1A. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5585 | 12/16/20 | VOR RWY 3, Amdt 18. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5587 | 12/16/20 | RNAV (GPS) RWY 21, Amdt 1A. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5588 | 12/16/20 | RNAV (GPS) RWY 3, Amdt 1A. |
| 25–Mar–21 | KS | Manhattan | Manhattan Rgnl | 0/5590 | 12/16/20 | ILS OR LOC RWY 3, Amdt 7B. |
| 25–Mar–21 | NM | Las Vegas | Las Vegas Muni | 0/6154 | 12/15/20 | RNAV (GPS) RWY 2, Orig-A. |
| 25–Mar–21 | NM | Las Vegas | Las Vegas Muni | 0/6155 | 12/15/20 | RNAV (GPS) RWY 20, Orig-B. |
| 25–Mar–21 | NM | Las Vegas | Las Vegas Muni | 0/6156 | 12/15/20 | RNAV (GPS) RWY 32, Orig-B. |
| 25–Mar–21 | OR | Roseburg | Roseburg Rgnl | 0/6314 | 12/7/20 | VOR–A, Amdt 6A. |
| 25–Mar–21 | OR | Roseburg | Roseburg Rgnl | 0/6315 | 12/7/20 | RNAV (GPS)–B, Orig-A. |
| 25–Mar–21 | NE | Aurora | Aurora Muni—Al Potter Field | 0/6523 | 12/17/20 | VOR–A, Amdt 6B. |
| 25–Mar–21 | NM | Gallup | Gallup Muni | 0/6636 | 12/10/20 | RNAV (GPS) RWY 6, Amdt 2. |
| 25–Mar–21 | NM | Gallup | Gallup Muni | 0/6639 | 12/10/20 | LOC RWY 6, Amdt 3C. |
| 25–Mar–21 | NM | Gallup | Gallup Muni | 0/6649 | 12/10/20 | VOR RWY 6, Amdt 8B. |
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/6675 | 12/16/20 | RNAV (GPS) RWY 36, Amdt 1. |
| 25–Mar–21 | GA | Monroe | Cy Nunnally Memorial | 0/6849 | 12/10/20 | RNAV (GPS) RWY 3, Amdt 2C. |
| 25–Mar–21 | NE | Sidney | Sidney Muni/Lloyd W Carr Field. | 0/6853 | 12/16/20 | VOR/DME RWY 31, Amdt 5B. |
| 25–Mar–21 | NE | Sidney | Sidney Muni/Lloyd W Carr Field. | 0/6880 | 12/16/20 | VOR/DME RWY 13, Amdt 5B. |
| 25–Mar–21 | NE | Sidney | Sidney Muni/Lloyd W Carr Field. | 0/6882 | 12/16/20 | RNAV (GPS) RWY 31, Amdt 2A. |
| 25–Mar–21 | NE | Sidney | Sidney Muni/Lloyd W Carr Field. | 0/6883 | 12/16/20 | RNAV (GPS) RWY 13, Amdt 2A. |
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/6937 | 12/16/20 | RNAV (GPS) RWY 18, Amdt 2A. |
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/6939 | 12/16/20 | VOR–A, Orig-A. |
| 25–Mar–21 | MN | Ortonville | Ortonville Muni-Martinson Field. | 0/8096 | 12/17/20 | RNAV (GPS) RWY 34, Orig-A. |
| 25–Mar–21 | GA | Pine Mountain | Harris County | 0/8097 | 12/10/20 | RNAV (GPS) RWY 9, Orig-C. |
| 25–Mar–21 | GA | Pine Mountain | Harris County | 0/8101 | 12/10/20 | VOR–A, Amdt 5C. |
| 25–Mar–21 | TX | Mount Vernon | Franklin County | 0/8102 | 12/18/20 | RNAV (GPS) RWY 13, Orig-A. |
| 25–Mar–21 | IL | Macomb | Macomb Muni | 0/8304 | 12/16/20 | RNAV (GPS) RWY 27, Amdt 1B. |
| 25–Mar–21 | IL | Macomb | Macomb Muni | 0/8305 | 12/16/20 | RNAV (GPS) RWY 9, Amdt 1C. |
| 25–Mar–21 | IL | Macomb | Macomb Muni | 0/8306 | 12/16/20 | LOC RWY 27, Amdt 3B. |
| 25–Mar–21 | WI | Friendship (Adams) | Adams County Legion Field | 0/8484 | 12/15/20 | RNAV (GPS) RWY 33, Orig-A. |
| 25–Mar–21 | MN | Hutchinson | Hutchinson Muni-Butler Field | 0/9204 | 12/16/20 | VOR RWY 33, Amdt 3B. |
| 25–Mar–21 | MN | Hutchinson | Hutchinson Muni-Butler Field | 0/9211 | 12/16/20 | RNAV (GPS) RWY 33, Orig-B. |
| 25–Mar–21 | MN | Hutchinson | Hutchinson Muni-Butler Field | 0/9212 | 12/16/20 | RNAV (GPS) RWY 15, Orig-B. |
| 25–Mar–21 | AL | Monroeville | Monroe County Aeroplex | 0/9220 | 12/7/20 | RNAV (GPS) RWY 21, Orig-C. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/9466 | 12/16/20 | RNAV (GPS) RWY 31, Amdt 1. |
| 25–Mar–21 | TX | Longview | East Texas Rgnl | 0/9471 | 12/16/20 | VOR/DME OR TACAN RWY 13, Amdt 2. |
| 25–Mar–21 | MI | Coldwater | Branch County Meml | 1/1020 | 1/11/21 | VOR/DME RWY 25, Orig-A. |
| 25–Mar–21 | MI | Coldwater | Branch County Meml | 1/1021 | 1/11/21 | VOR RWY 7, Amdt 5A. |
| 25–Mar–21 | MI | Coldwater | Branch County Meml | 1/1022 | 1/11/21 | RNAV (GPS) RWY 25, Orig-A. |
| 25–Mar–21 | MI | Coldwater | Branch County Meml | 1/1025 | 1/11/21 | RNAV (GPS) RWY 7, Amdt 1A. |
| 25–Mar–21 | KS | Lawrence | Lawrence Muni | 1/2308 | 1/11/21 | VOR/DME–A, Amdt 10A. |
| 25–Mar–21 | KS | Lawrence | Lawrence Muni | 1/2309 | 1/11/21 | RNAV (GPS) RWY 33, Amdt 1. |
| 25–Mar–21 | KS | Lawrence | Lawrence Muni | 1/2310 | 1/11/21 | RNAV (GPS) RWY 15, Orig-C. |
| 25–Mar–21 | KS | Lawrence | Lawrence Muni | 1/2311 | 1/11/21 | ILS OR LOC RWY 33, Amdt 1B. |
| 25–Mar–21 | NE | Chappell | Billy G Ray Fld | 1/3563 | 1/13/21 | NDB OR GPS RWY 30, Amdt 2B. |
| 25–Mar–21 | IL | Chicago | Chicago O'Hare Intl | 1/3896 | 1/14/21 | ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I and II), Amdt 7. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4243 | 1/15/21 | RNAV (GPS) RWY 3, Amdt 1A. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4244 | 1/15/21 | ILS OR LOC RWY 3, Amdt 7A. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4245 | 1/15/21 | VOR/DME RWY 21, Amdt 9A. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4246 | 1/15/21 | RNAV (GPS) RWY 26, Amdt 1A. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4247 | 1/15/21 | RNAV (GPS) RWY 21, Amdt 2. |
| 25–Mar–21 | WY | Casper | Casper/Natrona County Intl | 1/4248 | 1/15/21 | RNAV (GPS) RWY 8, Amdt 1A. |
| 25–Mar–21 | TX | Hereford | Hereford Muni | 1/7877 | 2/2/21 | RNAV (GPS) RWY 2, Orig-A. |
| 25–Mar–21 | TX | Hereford | Hereford Muni | 1/7878 | 2/2/21 | RNAV (GPS) RWY 20, Orig-B. |
| 25–Mar–21 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Exec | 1/8459 | 2/2/21 | VOR RWY 16, Orig-F. |
| 25–Mar–21 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Exec | 1/8461 | 2/2/21 | RNAV (GPS) RWY 16, Amdt 1E. |
| 25–Mar–21 | IL | Chicago/Prospect Heights/Wheeling. | Chicago Exec | 1/8463 | 2/2/21 | ILS OR LOC RWY 16, Amdt 2E. |
| 25–Mar–21 | NY | Monticello | Sullivan County Intl | 1/9612 | 2/2/21 | RNAV (GPS) RWY 15, Orig-B. |
| 25–Mar–21 | NY | Monticello | Sullivan County Intl | 1/9613 | 2/2/21 | RNAV (GPS) RWY 33, Amdt 1A. |

[FR Doc. 2021–04622 Filed 3–4–21; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31355; Amdt. No. 3943]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 5, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2021.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5

U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 5, 2021.

**Wade Terrell,**

*Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 25 March 2021**

Chicago, IL, KMDW, RNAV (GPS) Z RWY 13C, Amdt 2

**Effective 22 April 2021**

North Little Rock, AR, KORK, LOC RWY 5, Orig-C
North Little Rock, AR, KORK, RNAV (GPS) RWY 5, Amdt 1A
North Little Rock, AR, KORK, RNAV (GPS) RWY 35, Orig-B
Globe, AZ, P13, RNAV (GPS) RWY 27, Amdt 1
Lake Havasu City, AZ, KHII, RNAV (GPS) RWY 14, Orig-C
Lake Havasu City, AZ, KHII, RNAV (GPS) RWY 32, Orig-A
Lake Havasu City, AZ, KHII, VOR–A, Amdt 1A
Show Low, AZ, KSOW, NDB–A, Amdt 2A, CANCELLED
Grass Valley, CA, KGOO, RNAV (GPS) RWY 7, Orig-D
Los Angeles, CA, KLAX, ILS OR LOC RWY 24L, Amdt 27D
Los Angeles, CA, KLAX, ILS OR LOC RWY 25R, Amdt 19A
Los Angeles, CA, KLAX, RNAV (GPS) Y RWY 24L, Amdt 5C
Los Angeles, CA, KLAX, RNAV (GPS) Y RWY 25R, Amdt 3B
Los Angeles, CA, KLAX, RNAV (RNP) Z RWY 24L, Amdt 2A
San Diego/El Cajon, CA, Gillespie Field, Mission Bay Two Graphic DP
San Diego/El Cajon, CA, Gillespie Field, Takeoff Minimums and Obstacle DP, Amdt 7
San Francisco, CA, KSFO, ILS PRM RWY 28L (SIMULTANEOUS CLOSE PARALLEL), Amdt 3A, CANCELLED
San Francisco, CA, KSFO, LDA/DME RWY 28R, Amdt 2B, CANCELLED
San Francisco, CA, KSFO, LDA PRM RWY 28R (CLOSE PARALLEL), Amdt 2B, CANCELLED
San Francisco, CA, KSFO, RNAV (GPS) PRM RWY 28L (CLOSE PARALLEL), Amdt 2, CANCELLED
San Francisco, CA, KSFO, RNAV (GPS) PRM X RWY 28R (CLOSE PARALLEL), Amdt 1B, CANCELLED
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 10, Amdt 1C
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 17, Amdt 1B
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 35, Amdt 1B
Miami, FL, KMIA, ILS OR LOC RWY 26L, Amdt 16B
Tampa, FL, KTPA, RNAV (RNP) Y RWY 19L, Amdt 1E, CANCELLED
Atlanta, GA, KCCO, ILS OR LOC RWY 33, Orig-B
Atlanta, GA, KCCO, RNAV (GPS) RWY 15, Amdt 1B
Atlanta, GA, KCCO, RNAV (GPS) RWY 33, Amdt 2B
Hazlehurst, GA, KAZE, NDB RWY 14, Amdt 5A, CANCELLED
Kahului, HI, Kahului, ILS OR LOC RWY 2, Amdt 26
Waterloo, IA, Waterloo Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Arco, ID, KAOC, RNAV (GPS)-A, Orig-B
Boise, ID, KBOI, VOR OR TACAN RWY 10L, Amdt 2B
Boise, ID, KBOI, VOR OR TACAN RWY 28L, Amdt 2A
Benton, IL, Benton Muni, Takeoff Minimums and Obstacle DP, Orig-A

Effingham, IL, Effingham County Memorial, Takeoff Minimums and Obstacle DP, Amdt 5B
Paris, IL, KPRG, VOR/DME–A, Amdt 8A, CANCELLED
Plymouth, IN, C65, RNAV (GPS) RWY 10, ORIG-B
Dodge City, KS, KDDC, ILS OR LOC RWY 14, Amdt 3B
Dodge City, KS, KDDC, VOR RWY 14, Amdt 19B
Dodge City, KS, KDDC, VOR RWY 32, Amdt 5B
Elkhart, KS, KEHA, NDB RWY 35, Amdt 2A, CANCELLED
Welsh, LA, Welsh, Takeoff Minimums and Obstacle DP, Orig
Escanaba, MI, KESC, RNAV (GPS) RWY 19, Orig
Aitkin, MN, KAIT, NDB RWY 16, Amdt 5C, CANCELLED
Cambridge, MN, Cambridge Muni, RNAV (GPS) RWY 16, Orig-C
Pine River, MN, KPWC, NDB RWY 34, Amdt 2A, CANCELLED
Sauk Centre, MN, D39, RNAV (GPS) RWY 32, Amdt 1B
Asheville, NC, KAVL, ILS OR LOC RWY 35, Amdt 1
Asheville, NC, KAVL, RNAV (GPS) RWY 35, Amdt 1
Scribner, NE, KSCB, RNAV (GPS) RWY 17, Amdt 1B
Manchester, NH, KMHT, ILS OR LOC RWY 6, Amdt 3A
Manchester, NH, KMHT, ILS OR LOC RWY 35, ILS RWY 35 (SA CAT I), ILS RWY 35 (CAT II), ILS RWY 35 (CAT III), Amdt 5
Manchester, NH, KMHT, RNAV (GPS) RWY 24, Amdt 2
Linden, NJ, Linden, Takeoff Minimums and Obstacle DP, Amdt 3
Glens Falls, NY, Floyd Bennett Memorial, Takeoff Minimums and Obstacle DP, Amdt 2
New York, NY, Downtown Manhattan/Wall St, Takeoff Minimums and Obstacle DP, Amdt 1
New York, NY, East 34th St, Takeoff Minimums and Obstacle DP, Amdt 1
New York, NY, West 30th St, Takeoff Minimums and Obstacle DP, Amdt 2
Wooster, OH, KBJJ, VOR RWY 10, Amdt 1D
Corvallis, OR, KCVO, ILS OR LOC RWY 17, Amdt 5A
Corvallis, OR, KCVO, VOR RWY 17, Amdt 8A
Reading, PA, Reading Rgnl/Carl A Spaatz Field, ILS OR LOC RWY 13, Amdt 1D
Charleston, SC, KCHS, ILS OR LOC RWY 15, ILS RWY 15 (SA CAT I), ILS RWY 15 (CAT II), Amdt 24B
Florence, SC, KFLO, RNAV (GPS) RWY 27, Orig-C
Manning, SC, KMNI, NDB OR GPS RWY 2, Amdt 2B
Cleveland, TN, KRZR, RNAV (GPS) RWY 3, Amdt 2B
Pulaski, TN, Abernathy Field, Takeoff Minimums and Obstacle DP, Amdt 5
Dallas-Fort Worth, TX, KDFW, ILS OR LOC RWY 36L, ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Amdt 5
Gilmer, TX, KJXI, RNAV (GPS) RWY 18, Orig-C
Hondo, TX, KHDO, NDB RWY 35R, Amdt 5A, CANCELLED
Kenedy, TX, Kenedy Rgnl, RNAV (GPS) RWY 34, Orig-D
Wichita Falls, TX, Wichita Valley, Takeoff Minimums and Obstacle DP, Amdt 1A
Fillmore, UT, KFOM, RNAV (GPS) RWY 4, Amdt 1C
Fillmore, UT, KFOM, RNAV (GPS) RWY 22, Amdt 1A
Provo, UT, KPVU, ILS OR LOC RWY 13, Amdt 5
Provo, UT, Provo Muni, RNAV (GPS) RWY 13, Amdt 3
Salt Lake City, UT, KSLC, ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), Amdt 3E
Salt Lake City, UT, KSLC, RNAV (GPS) RWY 34L, Amdt 1D
Salt Lake City, UT, KSLC, RNAV (GPS) RWY 35, Amdt 3A
Vernal, UT, KVEL, RNAV (GPS) Z RWY 35, Orig-B
Charlottesville, VA, KCHO, RNAV (GPS) RWY 3, Amdt 3A
Burlington, VT, Burlington Intl, ILS OR LOC RWY 15, Amdt 24C
Wilbur, WA, 2S8, RNAV (GPS)-A, Orig-A
Kenosha, WI, KENW, RNAV (GPS) RWY 7L, Amdt 1A
Waupaca, WI, KPCZ, RNAV (GPS) RWY 10, Amdt 2B

[FR Doc. 2021–04621 Filed 3–4–21; 8:45 am]
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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9936]**

**RIN 1545–BO59**

## Guidance on Passive Foreign Investment Companies; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains corrections to the final regulations (Treasury Decision 9936), that were published in the **Federal Register** on Friday, January 15, 2021. The final regulations regarding the determination of whether a foreign corporation is treated as a passive foreign investment company (''PFIC'') for purposes of the Internal Revenue Code (''Code''), and the application and scope of certain rules that determine whether a United States person that indirectly holds stock in a PFIC is treated as a shareholder of the PFIC.

**DATES:** These corrections are effective on March 5, 2021 and applicable on or after January 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations §§ 1.1291–0 and 1.1291–1, 1.1297–0 through 1.1297–2, 1.1298–0, 1.1298–2, and 1.1298–4, Christina G. Daniels at (202) 317–6934; concerning the regulations §§ 1.1297–4 and 1.1297–6, Josephine Firehock at (202) 317–4932 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9936) that are the subject of this correction are issued under sections 1297 and 1298 of the Internal Revenue Code.

### Need for Correction

As published the final regulations (TD 9936) that contain errors that need to be corrected.

### Correction of Publication

Accordingly, the final regulations (TD 9936) that are the subject of FR Doc. 2020–27009, which published on January 15, 2021 (86 FR 4516), are corrected as follows:

1. On page 4532, the third column, the ninth line from the bottom of the last partial paragraph, the language ''claims'' is corrected to read ''claims,''.
2. On page 4534, the third column, the tenth line from the bottom of the first partial paragraph, the language ''1000'' is corrected to read ''1,000''.
3. On page 4541, the third column, the last line of the third paragraph by removing the language ''Id.''.
4. On page 4553, the second column, the last line of the first full paragraph, the language ''[X]'' is corrected to read ''1545–1002''.

**Crystal Pemberton,**

*Senior Federal Register Liaison, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2021–04282 Filed 3–4–21; 8:45 am]
BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2021–0099]**

## Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notification of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Seaboard System Railroad Bridge, across the

Okeechobee Waterway, mile 28.2, at Indiantown, Florida. The bridge owner requested to start the three hour advance notice for an opening earlier each evening and end it one hour later each morning. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these proposed changes.

**DATES:** This deviation is effective without actual notice from March 5, 2021 through 11:59 p.m. on August 27, 2021. For the purposes of enforcement, actual notice will be used from 1 a.m. on March 1, 2021 until March 5, 2021.

Comments and related material must reach the Coast Guard on or before April 29, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0099 using Federal eRulemaking Portal at *https://www.regulations.gov.*

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 test deviation, call or email L.T. Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Background, Purpose, and Legal Basis

The Seaboard System Railroad Bridge across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida is a swing bridge with a seven foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.317(e). Navigation on the waterway is commercial and recreational.

The bridge owner, CSX Transportation, requested that vessels provide a three hour advance notification for a bridge opening during the evening and overnight hours. The three hour advance notification would align with the operating schedule of the U.S. Army Corps of Engineers (USACE) Locks along this portion of the Okeechobee Waterway. After reviewing the draw tender logs, the Coast Guard determined that allowing the bridge to change the start and end times for the advance notice may meet the reasonable needs of navigation.

Under this test deviation, the draw shall open on signal, except that from 7 p.m. to 7 a.m. the draw shall open if at least a three hour advance notice is given. Advance openings can be arranged by contacting CSX Transportation at 1–850–209–9528.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

## II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this test deviation as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: February 25, 2021.

**Randall D. Overton,**

*Director, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 2021–04552 Filed 3–4–21; 8:45 am]

**BILLING CODE 9110–04–P**

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**LIBRARY OF CONGRESS**

**U.S. Copyright Office**

**37 CFR Part 210**

**[Docket No. 2020–5]**

# Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Supplemental interim rule.

**SUMMARY:** The U.S. Copyright Office is amending its regulations governing certain reporting requirements of digital music providers and significant nonblanket licensees pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. This amendment adjusts provisions concerning the reporting of information about permanent download pass-through licenses in light of recent requests for accommodations to avoid potential market disruption.

**DATES:** Effective April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov,* or Cassandra G. Sciortino, Attorney-Advisor, by email at *csciortino@copyright.gov.* Each can be contacted by telephone at (202) 707–8350.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 11, 2018, the President signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It does so by switching from a song-by-song licensing system to a blanket licensing regime that became available on January 1, 2021 (the ''license availability date''), administered by a mechanical licensing

[1] Public Law 115–264, 132 Stat. 3676 (2018).

collective (''MLC'') designated by the Copyright Office (the ''Office''). Digital music providers (''DMPs'') are able to obtain the new compulsory blanket license to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'' where such activity qualifies for a compulsory license), subject to compliance with various requirements, including reporting obligations.[2] DMPs may also continue to engage in those activities solely through voluntary, or direct, licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee (''SNBL'') under the statute, subject to separate reporting obligations.

On September 17, 2020, the Office issued an interim rule adopting regulations concerning certain types of reporting required under the statute after the license availability date: notices of license and reports of usage by DMPs, and notices of nonblanket activity and reports of usage by SNBLs (the ''September 2020 rule'').[3] Those interim regulations include requirements to report certain information about certain permanent download licenses.[4] They were adopted to help ensure that the MLC receives sufficient information to be able to fulfill its statutory obligations, including under section 115(d)(3)(G)(i)(I)(bb), and to effectuate the reporting requirements of section 115(d)(4)(A)(ii)(II).

After the adoption of these rules, which involved multiple rounds of public comments through a notification of inquiry,[5] notice of proposed rulemaking,[6] and an *ex parte* communications process,[7] the DLC raised a new concern with respect to the applicability of these particular reporting provisions to ''pass-through'' licenses for permanent downloads.[8] The DLC explained that ''all [DMPs operating] download stores operate exclusively under so-called 'pass-through' licenses received from record labels, where the label obtains the mechanical licenses from musical work copyright owners and then authorizes downstream distributors to make and distribute permanent downloads.'' [9] The Office notes that this focus on permanent downloads reflects that the scope of ''pass-through'' licensing under section 115 was diminished under the MMA, which eliminated the ability of record labels to ''pass-through'' section 115 licenses for streaming or limited downloads.[10]

The underlying mechanical license pursuant to which the DMP has been given authority for permanent downloads by a record label can be either compulsory or voluntary. Under the MMA, the compulsory version is defined as an ''individual download license,'' which is ''a compulsory license obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work.'' [11] The non-compulsory version (a ''voluntary pass-through license'') does not appear to be directly addressed by the MMA, but in general the MMA provides for preexisting voluntary licenses to remain in effect after the blanket license availability date.[12]

The DLC raised the concern that the relevant reporting requirements set forth in the September 2020 rule require DMPs and SNBLs operating under the authority of pass-through licenses to report certain information about such licenses, including identification and contact information for relevant musical work copyright owners, that they do not have.[13] The DLC stated that:

> This information is not provided by record labels to download stores through existing reporting mechanisms . . . and for this to occur would require record labels and digital music providers to invest resources to build entirely new systems. The reality is that services are not likely to make those investments, especially because purchases of permanent downloads, while still significant, are declining. It is far more likely that download stores would simply cease operations.[14]

The DLC submitted proposed regulatory amendments to address their concerns, to which the MLC did not object.[15] The MLC and DLC agreed that ''allowing the existing rules to go into effect without alteration would cause market disruption for permanent download offerings.'' [16]

In response, on December 28, 2020, the Office issued a supplemental interim rule with request for comments (the ''December 2020 rule'').[17] In the December 2020 rule, the Office tentatively agreed that the issue needed to be addressed and noticed the matter for public comment. It adjusted the September 2020 rule, effective immediately, to prevent the potential market disruption that the MLC and DLC were concerned about while the Office solicited comments and continued to consider how best to proceed with respect to the issue. Specifically, the December 2020 rule created a temporary exception to the previously adopted reporting requirements with respect to individual download licenses and voluntary pass-through licenses, such that the failure to report information about these licenses will not otherwise impact a DMP's or SNBL's compliance with their various requirements under the MMA and the Office's related regulations (*e.g.,* the MLC cannot use the failure to provide that particular information as a basis to reject an otherwise compliant notice of license or serve a notice of default on an otherwise compliant blanket licensee). The December 2020 rule further provided that after the temporary exception is no longer in effect, the MLC can take action against a DMP or SNBL who benefitted from the exception if any amended reporting requirements adopted by the Office are not complied with by the DMP or SNBL within 45 days after their effective date (or an alternate date subsequently adopted by

[2] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[3] 85 FR 58114 (Sept. 17, 2020).

[4] 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5).

[5] 84 FR 49966 (Sept. 24, 2019).

[6] 85 FR 22518 (Apr. 22, 2020).

[7] Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.*

[8] *See* DLC *Ex Parte* Letter at 4–7 (Nov. 10, 2020).

[9] *Id.* at 4.

[10] *See* H.R. Rep. No. 115–651, at 4 (2018) (''Subsection (b)(3) maintains the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads. Under the Music Modernization Act, a record label will no longer be eligible to obtain and pass through a Section 115 license to a digital music provider to engage in activities related to interactive streams or limited downloads.''); S. Rep. No. 115–339, at 4 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 3 (2018), *https://www.copyright.gov/legislation/mma/_conference_report.pdf* (''Conf.Rep.''); U.S. Copyright Office, *Copyright and the Music Marketplace* at 27–28 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing previous pass-through licensing practices).

[11] 17 U.S.C. 115(e)(12).

[12] *See id.* at 115(d)(9)(C).

[13] DLC *Ex Parte* Letter at 4–6 (Nov. 10, 2020).

[14] *Id.* at 5–6.

[15] DLC & MLC *Ex Parte* Letter at 4, add. B (Dec. 9, 2020).

[16] *Id.* at 4.

[17] 85 FR 84243 (Dec. 28, 2020).

the Office, whichever is later). The MLC and DLC indicated that neither of them opposed the Office employing this approach.[18]

With respect to the DLC's concerns, the Office solicited comments on the DLC's proposal, which would exempt individual download licenses and voluntary pass-through licenses from the relevant reporting requirements under the September 2020 rule, and would instead impose alternative requirements that the DLC views as more appropriate and feasible for DMPs to comply with in light of the information they typically receive from record labels, but that still ensure that the MLC has sufficient information to fulfill its statutory duties. The Office specifically sought comments regarding its authority to adopt the DLC's proposal, and invited comments more generally on how to address, or whether the Office should address, the pass-through license issue, including whether a different approach should be taken.

The Office received responsive comments from the DLC, MLC, and the Alliance for Recorded Music (''ARM''), all agreeing that the issue should be addressed, that the DLC's proposed solution should be adopted, and that the Office has the authority to do so.[19] Having reviewed and considered all relevant comments in the record, the Office concludes that it is necessary and appropriate under its authority pursuant to 17 U.S.C. 115 and 702 to further adjust the current interim rule to address the concerns that have been raised.[20] The Office further finds the DLC's unopposed proposal to be a reasonable approach that is within the Office's authority to adopt; thus, it is being implemented with only minor modifications, discussed below.

## II. Supplemental Interim Rule

The DLC's comments reiterate the concerns it previously raised:

> The existing reporting regulations require permanent download services operating under the authority of 'voluntary pass-through licenses' to report information that they do not know—in particular, the identity and contact information for copyright owners of the musical works embodied in sound recordings. That is because musical work copyright owners issue voluntary pass-through licenses not to digital services, but to *record labels,* on the understanding that they will pass through the authority to make and distribute permanent downloads to downstream services. Record labels do pass on this authority but do not today report such identity and contact information to services through existing data feeds. Given that permanent downloads represent a diminishing (even if still significant) share of the market, labels and services will probably not invest in those reporting systems.[21]

ARM confirms that ''[d]ownload stores . . . are still a significant contributor to the recorded music industry's revenues,'' contributing ''nearly $1 billion (*i.e.,* $856 million) in annual revenues'' as of 2019.[22] ARM seconds the DLC's assertions that ''[a]bsent a change in the interim rule to address this problem, 'download stores would simply cease operations' rather than investing the resources to build entirely new systems to collect and report the necessary information,'' adding that ''[g]iven the revenue figures cited above, any such decision by the operators of download stores would be extremely damaging to artists and labels alike.'' [23] The MLC also ''understands that the market for permanent downloads faces significant disruption if DMPs operating download stores under pass-through mechanical licenses are required to identify and provide contact information for each respective musical work copyright owner in order to have those pass-through licenses recognized by the MLC and carved out from the blanket license.'' [24] The Office agrees that the relevant reporting requirements adopted by the September 2020 rule should be adjusted in light of this additional information to avoid any such potential harm or disruption to the permanent download market, especially given that the MLC does not object that doing so may impede its ability to properly administer the blanket license.

The September 2020 rule required DMPs and SNBLs to report certain information about applicable voluntary licenses and individual download licenses, including the identity and contact information for the musical work copyright owners for works subject to such licenses.[25] The DLC's proposed solution is to exempt pass-through licenses—both individual download licenses and voluntary pass-through licenses—from these reporting requirements, and instead impose alternative reporting requirements pursuant to which DMPs and SNBLs must either indicate reliance on pass-through licenses for all of their permanent downloads or provide a list of all sound recordings covered by pass-through licenses, or provide a list of any applicable catalog exclusions where it is indicated that authority otherwise exists for all permanent downloads.[26] The MLC does not oppose this proposal and states that ''[w]ith respect to the practical viability of the DLC Proposal, the MLC believes that it can effectively and efficiently administer the blanket license with the reporting adjustments in the proposal.'' [27]

This proposal strikes the Office as reasonable in light of the concerns raised following the adoption of the September 2020 rule and the MLC's statements that the proposed alternative information to be reported will be sufficient for it to effectively and efficiently administer the blanket license. The remaining question is whether the Office has the authority under the MMA to adopt the proposal. In the notice soliciting comments that accompanied the December 2020 rule, the Office said that in particular, the Office seeks comments regarding its authority to adopt the DLC's proposal in light of 17 U.S.C. 115(d)(4)(A)(ii)(II), which requires DMPs to ''identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported.'' [28] The Office said that while the DLC argues that the statute is ''at least . . . ambiguous'' and that the Office can ''exercise its general regulatory authority to clarify this issue,'' the Office is cautious about potentially concluding that the term ''voluntary license'' in that provision excludes voluntary pass-through licenses, and thus seeks further comments to aid its statutory analysis.[29] The Office said that relatedly, it seeks comments as to whether there are any concerns, as a matter of statutory interpretation, with

[18] DLC & MLC *Ex Parte* Letter at 4 (Dec. 9, 2020).

[19] *See* DLC Supplemental Interim Rule Comment at 1–4; MLC Supplemental Interim Rule Comment at 2–4; ARM Supplemental Interim Rule Comment at 1–3.

[20] *See* 17 U.S.C. 702, 115(d)(4)(A)(ii)(III), 115(d)(12)(A); *see also* H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12; *Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005).

[21] DLC Supplemental Interim Rule Comment at 1; *see* ARM Supplemental Interim Rule Comment at 2 n.1 (''Under this arrangement, it is the record labels—not the download stores—that are responsible for providing reports of use to the musical work copyright owners.'').

[22] ARM Supplemental Interim Rule Comment at 1.

[23] *Id.* at 2 (quoting DLC & MLC *Ex Parte* Letter at 4 (Dec. 9, 2020)).

[24] MLC Supplemental Interim Rule Comment at 2.

[25] 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5).

[26] DLC & MLC *Ex Parte* Letter at 4, add. B at 2–4, 7, 10, 28–29 (Dec. 9, 2020); *see* DLC Supplemental Interim Rule Comment at 1; MLC Supplemental Interim Rule Comment at 2 (stating that this would ''continue the industry practice of identifying pass-through licenses by reference to the sound recordings'').

[27] MLC Supplemental Interim Rule Comment at 3.

[28] 85 FR at 84244.

[29] *Id.*

interpreting the term ''voluntary license'' in section 115(d)(4)(A)(ii)(II) in the manner the DLC requests while reading the same term more broadly elsewhere in section 115, such as in the introductory paragraph of section 115(d)(4)(A)(ii).[30] In response, the DLC and ARM put forward several legal arguments supporting the Office's authority.[31] While the Office does not necessarily agree on every point asserted, the Office ultimately concurs that the DLC's proposal is not contrary to the statute and that the Office has the authority to adopt it (and that as a matter of policy, it is appropriate to do so in light of the unanimous public comments in support of the proposal).

Specifically, the Office has analyzed the interrelationships among sections 115(d)(3)(G)(i)(I)(bb), 115(d)(4)(A)(ii), 115(d)(4)(A)(ii)(I)(bb), and 115(d)(4)(A)(ii)(II), which address the MLC's obligations and DMP reporting requirements with respect to voluntary licenses and individual download licenses.[32] Under section 115(d)(3)(G)(i)(I)(bb), the MLC has a duty to ''confirm uses of musical works subject to voluntary licenses *and individual download licenses,* and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license.'' [33] And pursuant to the introductory paragraph of section 115(d)(4)(A)(ii), DMPs, in reporting to the MLC, must ''provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses *and individual download licenses*.'' [34] But under section 115(d)(4)(A)(ii)(II) (one of multiple subparts providing further specificity under this introductory paragraph), DMPs are required to report musical work copyright owner identity and contact information only for ''works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported.'' [35] Individual download licenses are conspicuously absent from this subpart, although the introductory paragraph of section 115(d)(4)(A)(ii) requires reporting of usage data under these licenses and the MLC must receive at least some sort of information about these licenses in order to be able to carry out its obligations under section 115(d)(3)(G)(i)(I)(bb). This suggests the Office should specify the information required to be reported with respect to individual download licenses pursuant to section 115(d)(4)(A)(ii)(III), which requires DMPs to ''provide such other information as the Register of Copyrights shall require by regulation,'' [36] in addition to the Office's general authority under section 115(d)(12)(A).

With respect to section 115(d)(4)(A)(ii)(II)'s usage of the phrase ''voluntary license,'' when read against these other provisions and the overall licensing framework, the Office believes this phrase is best read as referring only to voluntary licenses that DMPs have entered into directly with musical work copyright owners (or their agents), leaving a reporting gap for voluntary pass-through licenses for which the Office should detail requirements by regulation. By requiring identity and contact information for the relevant musical work copyright owners and omitting reference to individual download licenses, the provision implies a direct relationship between DMPs and the musical work copyright owners that does not exist with pass-through licenses. As the DLC notes, not only do DMPs not have this information, they often do not even know if the relevant pass-through licenses are voluntary or compulsory because that license belongs to the record label.[37] If Congress had meant for this provision to cover voluntary pass-through licenses, it would have likely included a reference to individual download licenses as well; there does not seem to be any reason to distinguish between them for reporting purposes.[38]

If the provision were read to include voluntary pass-through licenses, DMPs would have to obtain the relevant information from the sound recording copyright owners or licensors that have the direct relationship with the musical work copyright owners, but nothing in the statute compels them to provide such information to DMPs. Such a requirement would also be in tension with section 115(d)(4)(A)(ii)(I)(bb), which requires DMPs to report musical work copyright owner information for the musical works embodied in reported sound recordings only ''to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities.'' [39]

Additionally, the MMA's definition of ''voluntary license'' is very broad: ''A license for use of a musical work (or share thereof) other than a compulsory license obtained under this section.'' [40] Especially given that this definition is not even limited to covered activities, examining the context of the provision in which the term appears is critical. Here, as the foregoing shows, it is clear from reading the whole of section 115(d)(4)(A)(ii) together in context that section 115(d)(4)(A)(ii)(II) is meant to be referring to voluntary licenses for covered activities that are not pass-through licenses. This is in contrast, for example, to the introductory paragraph of section 115(d)(4)(A)(ii) where it is obviously meant to more broadly refer to both direct voluntary licenses *and* voluntary pass-through licenses.

This result is consistent with Congress's expressed intent to ''maintain[ ] the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads.'' [41] Reading the statute in a way that frustrates the continuation of download stores or pass-through licensing for permanent downloads would be contrary to Congress's wishes.

Accordingly, the Office has adopted the proposal with a minor modification. The Office is omitting the qualifying phrase ''where such authority applies to the exclusion of the blanket license authority pursuant to 17 U.S.C.

[30] *Id.*

[31] DLC Supplemental Interim Rule Comment at 2–4; ARM Supplemental Interim Rule Comment at 2–3.

[32] While the first two provisions expressly refer to both voluntary licenses and individual download licenses, the third does not explicitly refer to either, and the fourth only mentions voluntary licenses.

[33] 17 U.S.C. 115(d)(3)(G)(i)(I)(bb) (emphasis added).

[34] *Id.* at 115(d)(4)(A)(ii) (emphasis added).

[35] *Id.* at 115(d)(4)(A)(ii)(II).

[36] *See id.* at 115(d)(4)(A)(ii)(III).

[37] DLC *Ex Parte* Letter at 5 (Nov. 10, 2020) (''[D]ownload stores are not even aware when a label is relying on a compulsory license and when it is relying on a voluntary variant thereof. Nor have they ever received contact information for musical work copyright owners from record labels.''); DLC Supplemental Interim Rule Comment at 3 (''[I]t would be unusual for a service to have contact information for a musical work copyright owner with whom it has no direct contractual relationship.'').

[38] In adopting the September 2020 rule, and in the absence of any contrary comments at that time, the Office had read the provision as inadvertently omitting individual download licenses, and so adopted regulations requiring reporting of copyright owner identity and contact information for both voluntary licenses and individual download licenses. *See* 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5). While that interpretation is also reasonable, in light of the DLC's post-issuance comments about that approach, the Office now finds it more persuasive that the omission of individual download licenses was intentional, and that, instead, this provision simply did not specify that it was not intended to apply to voluntary pass-through licenses.

[39] *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(bb).

[40] *Id.* at 115(e)(36).

[41] *See* H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 4; Conf. Rep. at 3.

115(d)(1)(C)(i)'' from each place where it appears in the proposal.[42] The DLC characterized the language as ''simply reiterat[ing] the principle expressed in section 115(d)(1)(C)(i),'' and the MLC said it ''sees this language to be in the nature of 'for the avoidance of doubt' language.''[43] The MLC explained that the reason for the language is ''so that DMPs understand clearly that where they identify pass-through licenses at the sound recording level, then their blanket license coverage is also excluded at the sound recording level.''[44] The MLC noted that ''if the Office was to clarify that operation of voluntary license identification elsewhere, then the queried language would be less important.''[45]

In light of these points, the proposed language appears to be unnecessary. It also seems somewhat ambiguous, and could potentially be construed as suggesting that there may be types of voluntary licenses authorizing DMPs to make and distribute permanent downloads that do *not* apply to the exclusion of the blanket license, which the MLC and DLC state is not the intention of the language.[46] To clarify, as the MLC requests, the Office accepts the common sense reading of section 115(d)(1)(C)(i) that musical works (or shares thereof) are only excluded from the blanket license *to the extent* ''a voluntary license or individual download license applies.''[47] In other words, the scope of the exclusion from the blanket license corresponds to the scope of the alternative license authority. For example, a pass-through license for making permanent downloads of a particular sound recording of a musical work would only exclude the musical work as embodied in that specific sound recording and used in that specific DPD configuration; it would not exclude the musical work as embodied in other sound recordings or as used in other DPD configurations (like interactive streams) that are not part of that pass-through license authority (which could be separately excluded by other licenses).

The DLC's proposal also included a provision that ''explicitly acknowledges that the MLC may report to copyright owners regarding usage of their musical works that a DMP identified as covered by pass-through licenses.''[48] The MLC explains that it ''believes that it can substantially advance transparency'' by doing this, as it would ''for the first time in the industry, give copyright owners an independent record of download store usage that copyright owners can use to verify their royalty accountings from record labels for mechanical licenses that were passed through to DMPs.''[49] The rule includes this unopposed provision, as it further serves the transparency aims of the MMA.

In addition to adopting the modified DLC proposal, this supplemental interim rule updates the December 2020 rule by providing that the temporary reporting exception the Office had adopted while it noticed this topic for public comment and considered the issue more thoroughly shall be retired as of the effective date of the new provisions now being adopted. Beneficiaries of the temporary exception are reminded that in order to retain the protection of the exception, they must comply with the new supplemental interim rule by reporting the required information to the MLC within 45 days after the rule's effective date.

**List of Subjects in 37 CFR Part 210**

Copyright, Phonorecords, Recordings.

**Interim Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

## PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

**Authority:** 17 U.S.C. 115, 702.

■ 2. Amend § 210.24 as follows:

■ a. Remove ''or individual download license'' each place it appears;

■ b. In paragraph (b)(8) introductory text, add a sentence after the second sentence; and

■ c. Add paragraph (b)(9).

The additions read as follows:

### § 210.24 Notices of blanket license.

* * * * *

(b) * * *

(8) * * * This paragraph (b)(8) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. * * *

* * * * *

(9) A description of the extent to which the digital music provider is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Such description may indicate that such authority exists for all permanent downloads. Otherwise, such description shall include a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads. Such description shall also include an identification of the digital music provider's covered activities operated under such authority.

* * * * *

■ 3. Amend § 210.25 by revising paragraph (b)(6) to read as follows:

### § 210.25 Notices of nonblanket activity.

* * * * *

(b) * * *

(6) Acknowledgement of whether the significant nonblanket licensee is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Where such authority does not cover all permanent downloads made available on the service, the significant nonblanket licensee shall maintain with the mechanical licensing collective a list of all sound recordings for which it has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority otherwise exists for all permanent downloads.

* * * * *

■ 4. Amend § 210.27 as follows:

■ a. Revise paragraph (c)(5); and

■ b. In paragraph (g)(2)(ii), add a sentence at the end of the paragraph.

The revision and addition read as follows:

[42] *See* DLC & MLC *Ex Parte* Letter add. B at 2, 3, 10 (Dec. 9, 2020).

[43] DLC Supplemental Interim Rule Comment at 5; MLC Supplemental Interim Rule Comment at 2.

[44] MLC Supplemental Interim Rule Comment at 2.

[45] *Id.* at 3.

[46] *See* DLC Supplemental Interim Rule Comment at 5; MLC Supplemental Interim Rule Comment at 2.

[47] *See* 17 U.S.C. 115(d)(1)(C)(i).

[48] MLC Supplemental Interim Rule Comment at 3; DLC & MLC *Ex Parte* Letter add. B at 17 (Dec. 9, 2020).

[49] MLC Supplemental Interim Rule Comment at 3.

**§ 210.27 Reports of usage and payment for blanket licensees.**

* * * * *

(c) * * *

(5)(i) For any voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads, and an identification of the digital music provider's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

* * * * *

(g) * * *

(2) * * *

(ii) * * * These efforts may include providing copyright owners with information on usage of their respective musical works that was identified by a digital music provider as subject to a voluntary license or individual download license.

* * * * *

■ 5. Amend § 210.28 by revising paragraph (c)(5) to read as follows:

**§ 210.28 Reports of usage for significant nonblanket licensees.**

* * * * *

(c) * * *

(5)(i) For each voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all sound recordings for which the significant nonblanket licensee has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority otherwise exists for all permanent downloads, and identification of the significant nonblanket licensee's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

* * * * *

■ 6. Amend § 210.30 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b); and

■ c. Redesignate paragraph (c) as paragraph (b).

The revision reads as follows:

**§ 210.30 Temporary exception to certain reporting requirements about certain permanent download licenses.**

(a) Where a requirement of § 210.24(b)(8), § 210.25(b)(6), § 210.27(c)(5), or § 210.28(c)(5) has not been satisfied with respect to an individual download license or voluntary pass-through license before April 5, 2021, in connection with a submission to the mechanical licensing collective before such date, a submitter may take additional time to comply with such reporting obligations, as amended, by no later than May 19, 2021. Taking such additional time shall not render an otherwise compliant notice of license, notice of nonblanket activity, or report of usage invalid, or provide a basis for the mechanical licensing collective to reject an otherwise compliant notice of license, serve a notice of default on an otherwise compliant blanket licensee, terminate an otherwise compliant blanket license, or engage in legal enforcement efforts against an otherwise compliant significant nonblanket licensee. Any deadline otherwise applicable to any such action by the mechanical licensing collective shall be tolled with respect to a submitter permitted to take additional time to comply with these reporting obligations until May 19, 2021.

* * * * *

Dated: February 23, 2021.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

[FR Doc. 2021–04573 Filed 3–4–21; 8:45 am]

BILLING CODE 1410–30–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2021–0134; FRL–10020–94–Region 9]**

## Determination To Defer Sanctions; Arizona; Pinal County Air Quality Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted rules and other materials on behalf of the Pinal County Air Quality Control District (PCAQCD or District) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements. This determination is

based on a proposed approval, published elsewhere in this **Federal Register**, of PCAQCD's reasonably available control technology (RACT) SIP rules and negative declarations. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous partial disapproval and limited disapproval by the EPA in 2019 is now deferred. If the EPA finalizes its approval of PCAQCD's submission, relief from these sanctions will become permanent.

**DATES:** This interim final determination is effective on March 5, 2021. However, comments will be accepted on or before April 5, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0134 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4216 or by email at *Law.Nicole@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

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## I. Background

On August 9, 2019 (84 FR 39196), the EPA issued a final partial approval/partial disapproval and a limited approval/limited disapproval for revisions to the PCAQCD portion of the Arizona SIP that had been submitted by ADEQ to the EPA for approval (the 2017 RACT Submittal). The 2017 RACT Submittal action addressed the PCAQCD's RACT SIP requirements under the Act. In our 2017 RACT Submittal action, we determined that while PCAQCD's SIP revision submittal strengthened the SIP, the submittal did not fully meet the requirements for RACT SIPs under the CAA. Our 2017 RACT Submittal action included a final partial disapproval and limited disapproval action under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this partial disapproval and limited disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of September 9, 2019, and highway sanctions 6 months later.

On August 5, 2020, PCAQCD revised its rules and adopted additional negative declarations and on August 20, 2020, ADEQ submitted the revised rules and negative declarations to the EPA for approval into the Arizona SIP (2020 RACT Submittal). These negative declarations and revised rules are intended to address the partial disapproval and limited disapproval issues under title I, part D that we identified in our 2017 RACT Submittal action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of PCAQCD's 2020 RACT Submittal. Based on this proposed approval action, we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2017 RACT Submittal action's partial disapproval and limited disapproval of PCAQCD's RACT SIP and rules, because we believe that the 2020 RACT Submittal corrects the deficiencies that triggered such sanctions.[1]

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of PCAQCD's 2020 RACT Submittal with respect to the title I, part D deficiencies identified in our 2017 RACT Submittal action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2017 RACT Submittal action would be permanently terminated on the effective date of our final approval of PCAQCD's 2020 RACT Submittal.

[1] 40 CFR 52.31(d)(2).

## II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our partial disapproval and limited disapproval action on August 9, 2019 of PCAQCD's RACT SIP and rules with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve PCAQCD's 2020 RACT Submittal, which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that PCAQCD's 2020 RACT Submittal addresses the deficiencies under part D of title I of the CAA identified in our 2017 RACT Submittal action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the

purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

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 May 4, 2021. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 23, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–04388 Filed 3–4–21; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2017–0653; FRL–10019–99]**

## Picarbutrazox; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of picarbutrazox in or on multiple commodities which are identified and discussed later in this document. Nippon Soda Co., Ltd c/o Nisso America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective March 5, 2021. Objections and requests for hearings must be received on or before May 4, 2021, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0653, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/*

*text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0653 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 4, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0653, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 6, 2018 (83 FR 9471) (FRL–9973–27), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8623) by Nippon Soda Co., Ltd c/o Nisso America, Inc., 88 Pine Street, 14th Floor, New York, NY 10005. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide picarbutrazox, 1,1-Dimethylethyl N-(6-((((Z)-((1-methyl-1H-tetrazol-5-yl) phenylmethylene) amino)oxy)methyl)-2-pyridinyl)carbamate, in or on corn, forage at 0.01 parts per million (ppm); corn, grain at 0.01 ppm; corn, stover at 0.01 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.01 ppm; crop group 9, cucurbit vegetables at 0.20 ppm, crop subgroup 4–16A, leafy greens at 10 ppm; popcorn, grain at 0.01 ppm; soybean, forage at 0.01 ppm; soybean, hay at 0.01 ppm and soybean, seed at 0.01 ppm. That document referenced a summary of the petition prepared by Nippon Soda Co., Ltd c/o Nisso America, the registrant, which is available in the docket, *http://www.regulations.gov.* Nine comments were received on the notice of filing. However, they were not germane to this submission.

Based upon review of the data supporting the petition, EPA is establishing, in accordance with section 408(d)(4)(a)(i), tolerances that vary in some respects from what the petitioner requested. Also, EPA is not establishing tolerances for Crop Group 9, Cucurbit Vegetables and Crop Subgroup 4–16A, Leafy Greens, as the petitioner withdrew the request for those tolerances after submitting the petition. The Agency's underlying rationale for those variations are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

*A. Toxicological Profile*

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

The primary target organs for picarbutrazox are the liver and the thyroid gland across species and durations (except acute). The rat was the most sensitive species, followed by the mouse and the dog. Both the liver and the thyroid showed increases in organ weights and histopathological changes. In the liver, changes included hepatocyte hypertrophy, periportal vacuolation, cytoplasmic inclusions, and portal inflammatory cell infiltration. In the thyroid, there were increased incidences of thyroid hypertrophy which corresponded with increased thyroid weights in both parental animals and neonates. Disruption of thyroid hormones was also observed across the guideline studies, for the short-term and long-term durations in rats (alterations in triiodothyronine (T3), thyroxine (T4), and thyroid stimulating hormone (TSH)). Thyroid follicular tumors were observed in rats following 2 years of oral exposure. No treatment-related effects were observed in mice following 78 weeks of exposure. There is no evidence of genotoxicity or mutagenicity in the picarbutrazox hazard database.

There is no evidence of increased prenatal susceptibility in rats or rabbits or postnatal susceptibility in rats. There were no adverse fetal or maternal effects in the available developmental toxicity studies in rats or rabbits. Both studies tested up to the limit dose. In the multi-generation reproductive study, adverse thyroid effects were observed in the parental animals and occurred at doses lower than offspring effects. There were no adverse reproductive effects up to the highest dose tested (46/63 mg/kg/day).

Subchronic studies in rats were performed for the numerous plant metabolites generated from parent picarbutrazox. All were less toxic than the parent molecule. No signs of neurotoxicity were observed in the acute neurotoxicity study up to the limit dose (2,000 mg/kg/day). No dermal toxicity was observed in rats up to the limit dose (1,000 mg/kg/day). Picarbutrazox is categorized as having low acute lethality through the oral, dermal, and inhalation routes. It is minimally irritating to the eye and is neither a dermal irritant nor sensitizer.

In accordance with the EPA's Final Guidelines for Carcinogen Risk Assessment (March 2005), the Agency classified picarbutrazox as ''Suggestive Evidence of Carcinogenic Potential'' based on an increase in the incidence of thyroid follicular cell tumors, driven by adenomas in male and female rats and combined thyroid follicular adenomas/carcinomas in male rats. There is no concern for genotoxicity or mutagenicity and no treatment-related tumors were observed in mice. Based on its weight-of-evidence analysis, the Agency has determined that quantification of risk using a non-linear approach (*i.e.,* chronic reference dose (cRfD)) will adequately account for all chronic toxicity, including potential carcinogenicity, that could result from exposure to picarbutrazox. The chronic reference dose is several times lower than the dose at which tumors were observed.

Specific information on the studies received and the nature of the adverse effects caused by picarbutrazox as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Picarbutrazox. Human Health Risk Assessment in Support of a New Active Ingredient for Use on Corn and Soybean Seed and Turf'', dated December 18, 2020, hereinafter ''Picarbutrazox Human Health Risk Assessment'' in docket ID number EPA–HQ–OPP–2017–0653.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for picarbutrazox used for human risk assessment can be found on pages 19–20 in the Picarbutrazox Human Health Risk Assessment.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to picarbutrazox, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from picarbutrazox in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for picarbutrazox; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined chronic dietary exposure assessment using tolerance-level residues, 100 percent crop treated (PCT), and default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to picarbutrazox. Quantification of risk using a non-linear approach (*i.e.,* cRfD) will adequately account for all chronic toxicity, including potential carcinogenicity, that could result from exposure to picarbutrazox.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for picarbutrazox. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for picarbutrazox in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of picarbutrazox. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Using the Pesticides in Water Calculator (PWC) ver. 1.52, EPA calculated the estimated drinking water concentrations (EDWCs) of picarbutrazox for chronic exposures in surface and ground water. The groundwater estimates were significantly lower. EPA used the modeled EDWC of 2.56 ppb directly in dietary exposure model to account for the contribution of picarbutrazox residues in drinking water for the chronic dietary risk assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Picarbutrazox is currently proposed for turf uses that could result in residential exposures. EPA assessed residential exposure using the following assumptions: There is the potential for post-application exposure for adults and children following turf treatments made by professional applicators with picarbutrazox. A dermal exposure assessment was not quantitatively conducted because a dermal POD was not selected. The quantitative exposure/risk assessment for residential post-application exposures is based only on incidental oral scenarios for children 1 to <2 years old from hand to mouth activities on treated turf. Post-application exposure and risk estimates indicate that the short-term incidental oral MOEs, ranging from 970 to 360,000, are not of concern (*i.e.,* MOEs ≥30). Further information regarding EPA standard assumptions and generic

inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found picarbutrazox to share a common mechanism of toxicity with any other substances, and picarbutrazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that picarbutrazox does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased prenatal susceptibility in rats or rabbits or postnatal susceptibility in rats, with no adverse effects observed in the developmental toxicity studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for picarbutrazox is complete.

ii. There is no indication that picarbutrazox is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that picarbutrazox results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT, tolerance-level residues, default processing factors, and modeled drinking water estimates. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to picarbutrazox in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by picarbutrazox.

*E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, picarbutrazox is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to picarbutrazox from food and water will utilize <1% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of picarbutrazox is not expected.

3. *Short-term and Intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account short-term or intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Picarbutrazox is currently proposed for uses that could result in short-term and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term or intermediate-term residential exposures to picarbutrazox.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded the combined short-term or intermediate-term food, water, and residential exposures result in aggregate MOE of 950 for children 1 to <2 years old from dietary (food and drinking water) and incidental oral exposure from hand-to-mouth activities from post-application exposure to turf applications. Because EPA's level of concern for picarbutrazox is an MOE of 30 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* As stated in Unit III.A., a separate cancer analysis was not conducted as the chronic assessment adequately accounts for all chronic toxicity, including potential carcinogenicity. Based on the lack of chronic risk, EPA concludes that aggregate exposure to picarbutrazox will not pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to picarbutrazox residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography with tandem mass spectroscopy (LC/MS/MS) and high-performance liquid chromatography (HPLC/MS/MS)) is available to enforce the tolerance expression.

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program,

and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Picarbutrazox is a new active ingredient, and no maximum residue limits (MRLs) have yet been established by Codex.

*C. Revisions to Petitioned-For Tolerances*

The Agency is establishing tolerances for picarbutrazox using tolerance expression and commodity definitions that conform to current practices. Additionally, the Agency is establishing a tolerance on corn, pop, stover and corn, field, stover; the petitioner requested a tolerance on ''corn, stover'', but the correct terminology is ''corn, pop, stover'' and ''corn, field, stover''.

## V. Conclusion

Therefore, tolerances are established for residues of picarbutrazox, 1,1-Dimethylethyl N-(6-((((Z)-((1-methyl-1H-tetrazol-5-yl) phenylmethylene) amino)oxy)methyl)-2-pyridinyl)carbamate, in or on corn, field, forage at 0.01 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.01 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.01 ppm; soybean, forage at 0.01 ppm; soybean, hay at 0.01 ppm and soybean, seed at 0.01 ppm.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

**Edward Messina,**

*Acting Director, Office of Pesticide Programs.*

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

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

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

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

■ 2. Add § 180.718 to subpart C to read as follows:

### § 180.718 Picarbutrazox; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide picarbutrazox, including its metabolites and degradates, in or on the commodities to Table 1 of this section. Compliance with the tolerance levels specified in Table 1 is to be determined by measuring only picarbutrazox (1,1-dimethylethyl *N*-[6-[[[(*Z*)-[(1-methyl-1*H*-tetrazol-5-yl)phenylmethylene] amino]oxy]methyl]-2-pyridinyl] carbamate in or on the commodity.

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| Corn, field, forage | 0.01 |
| Corn, field, grain | 0.01 |
| Corn, field, stover | 0.01 |
| Corn, pop, grain | 0.01 |
| Corn, pop, stover | 0.01 |
| Corn, sweet, forage | 0.01 |
| Corn, sweet, kernel plus cob with husks removed | 0.01 |
| Corn, sweet, stover | 0.01 |
| Soybean, forage | 0.01 |
| Soybean, hay | 0.01 |
| Soybean, seed | 0.01 |

(b)–(d) [Reserved]

[FR Doc. 2021–04251 Filed 3–4–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R06–RCRA–2018–0506; FRL–10019–76–Region 6]**

### Texas: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On November 5, 2020, the Environmental Protection Agency (EPA) published a Proposed Rule to approve a revision to the State of Texas hazardous waste program under the Resource Conservation and Recovery Act (RCRA) and provided for a thirty-day public comment period. The public comment period closed on December 7, 2020, and EPA did not receive adverse comments. EPA confirms that the program revisions to the State of Texas hazardous waste program satisfy all requirements needed to qualify for final authorization. No further opportunity for comment will be provided.

**DATES:** This final authorization is effective March 5, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R06–RCRA–2018–0506. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some of the information is not publicly available. *e.g.,* Confidential Business Information (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 form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, EPA Region 6 Regional Authorization/Codification Coordinator, RCRA Permits & Solid Waste Section (LCR–RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, phone number: (214) 665–8533, email address: *patterson.alima@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:**

**A. What changes to Texas' hazardous waste program is EPA authorizing with this action?**

On December 5, 2018, the State of Texas submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21. EPA is finalizing its decision that Texas' hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. EPA will continue to implement and enforce Hazardous and Solid Waste Amendments of 1984 (HSWA) provisions for which the State is not authorized. For a complete list of rules that become effective with this Final Rule, please see the Proposed Rule published in the November 5, 2020, **Federal Register** at 85 FR 70558.

**B. What is codification and is the EPA codifying Texas' hazardous waste program as authorized in this rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations (CFR). We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272 subpart SS for this authorization of Texas' program changes until a later date. In this authorization application, the EPA is not codifying the rules documented in the Proposed Rule published in the November 5, 2020, **Federal Register** at 85 FR 70558.

**C. Administrative Requirements**

This final authorization revises Texas' authorized hazardous waste management program pursuant to RCRA section 3006 and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable Executive Orders and statutory provisions, please see the Proposed Rule published in the November 5, 2020, **Federal Register** at 85 FR 70558. The Congressional Review Act, 5 U.S.C. 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. The EPA will submit a report containing this document 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 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). This final action is effective March 5, 2021.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 24, 2021.

**David Gray,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2021–04353 Filed 3–4–21; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Parts 191 and 192

**[Docket No. PHMSA–2018–0046]**

**RIN 2137–AF36**

### Pipeline Safety: Gas Pipeline Regulatory Reform

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; withdrawal of enforcement discretion; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review,'' PHMSA delays the effective date of the final rule, ''Pipeline Safety: Gas Pipeline Regulatory Reform,'' until March 21, 2021. PHMSA also delays until March 21, 2021, its withdrawal of the March 26, 2019, ''Exercise of Enforcement Discretion Regarding Farm Taps'' and the unpublished October 27, 2015, letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels.

**DATES:**

*Delayed effective date:* As of March 5, 2021, the effective date of the final rule

amending 49 CFR parts 191 and 192 published at 86 FR 2210 on January 11, 2021, is delayed to March 21, 2021.

*Incorporation by reference date:* The incorporation by reference of certain publications listed in the final rule published at 86 FR 2210 on January 11, 2021, is delayed to March 21, 2021.

*Enforcement discretion withdrawal date:* The document published at 84 FR 11253 on March 26, 2019, is withdrawn as of March 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sayler Palabrica, Transportation Specialist, by telephone at 202–366–0559. Office hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing

A copy of the notice of proposed rulemaking (NPRM) (85 FR 35240, June 9, 2020), all comments received, the final rule, and all background material may be viewed online at *http://www.regulations.gov* using the docket number listed above. A copy of this document will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *http://www.ofr.gov* and the Government Publishing Office's website at *http://www.gpo.gov.*

## Background

On January 20, 2021, the Assistant to the President and Chief of Staff issued a memorandum titled, ''Regulatory Freeze Pending Review.'' The memorandum requested that the heads of executive departments and agencies (agencies) take steps to ensure that the President's appointees or designees have the opportunity to review any new or pending rules. With respect to rules published in the **Federal Register**, but not yet effective, the memorandum asked that agencies consider postponing the rules' effective dates for 60 days from the date of the memorandum (*i.e.,* until March 21, 2021) for the purpose of reviewing any questions of fact, law, and policy the rules may raise.

In accordance with this direction, PHMSA has decided to delay the effective date of the final rule, Pipeline Safety: Gas Pipeline Regulatory Reform (RIN 2137–AF36), until March 21, 2021. PHMSA likewise delays the withdrawal of the March 26, 2019, ''Exercise of Enforcement Discretion Regarding Farm Taps'' (84 FR 11253) and the unpublished October 27, 2015, letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels, each of which are available in the docket for the final rule. The final rule amends part 191 and 192 to reduce regulatory burdens on operators on the construction, maintenance, and operation of gas transmission, gas distribution, and gas gathering pipeline systems. The amendments include changes to requirements for distribution integrity management, reporting, corrosion control, design, welding, and testing. The delay in the final rule's effective date will afford the President's appointees or designees an opportunity to review the final rule and will allow for consideration of any questions of fact, law, or policy that the final rule may raise before it becomes effective.

## Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), PHMSA generally offers interested parties the opportunity to comment on proposed regulations and publish final rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking and may delay effective dates when the agency, for good cause, finds that each requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive both of these requirements here as they are impracticable. A delay in the effective date of the final rule, ''Pipeline Safety: Gas Pipeline Regulatory Reform'', is necessary for the President's appointees and designees to have adequate time to review the rule before it takes effect, and neither the notice and comment process nor the delayed effective date could be implemented in time to allow for this review.

## List of Subjects

*49 CFR Part 191*

Gas gathering, Integrity management, Pipeline reporting requirements, Pipeline safety.

*49 CFR Part 192*

Fire prevention, Incorporation by reference, Pipeline safety, Security measures.

Issued in Washington, DC, on March 1, 2021, under authority delegated in 49 CFR 1.97.

**Tristan H. Brown,**

*Acting Administrator.*

[FR Doc. 2021–04572 Filed 3–4–21; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 192

**[Docket No. PHMSA–2018–0046; Amdt. No. 192–28]**

**RIN 2137–AF36**

# Pipeline Safety: Gas Pipeline Regulatory Reform; Correction

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** PHMSA is correcting its Gas Pipeline Regulatory Reform final rule that published in the **Federal Register** on January 11, 2021. The rule makes miscellaneous changes to the regulatory requirements for gas pipeline systems.

**DATES:** This correction is effective March 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sayler Palabrica, Transportation Specialist, by telephone at 202–366–0559.

**SUPPLEMENTARY INFORMATION:** PHMSA is correcting its Gas Pipeline Regulatory Reform final rule that published in the **Federal Register** on January 11, 2021 (86 FR 2210). PHMSA is correcting the amendatory instructions to 49 CFR 192.281 and appendix B to part 192. PHMSA is also correcting the new regulatory text at § 192.507(d) to remove the word ''hydrostatic,'' consistent with the unanimous recommendation of the Gas Pipeline Advisory Committee and the stated intent in the preamble of the final rule.[1]

## List of Subjects in 49 CFR Part 192

Fire prevention, Incorporation by reference, Pipeline safety, Security measures.

## Corrections

In FR Doc. 2021–00208 that appears on page 2210 of the **Federal Register** on Monday, January 11, 2021, the following corrections are made:

[1] See 86 FR 2210 at page 2234.

**§ 192.281 [Corrected]**

■ 1. On page 2240, in the second column, in part 192, in amendment 10, the instruction ''In § 192.281, revise paragraph (c) to read as follow:'' is corrected to read ''In § 192.281, revise paragraph (c) introductory text to read as follows:''

■ 2. On page 2241, in the third column, in amendatory instruction 17, paragraph (d) is corrected to read as follows:

**§ 192.507 [Corrected]**

* * * * *

(d) For fabricated units and short sections of pipe, for which a post installation test is impractical, a preinstallation pressure test must be conducted in accordance with the requirements of this section.

**Appendix B to Part 192 [Corrected]**

■ 3. On page 2242, in the third column, in part 192 in amendment 25, the instructions are corrected to read:

■ a. In section I.A., remove the term ''ASTM D2513–12ae1'' and add in its place ''ASTM D2513''; and

■ b. In section I.B., remove the term ''ASTM D2513–12ae1'' and add in its place ''ASTM D2513''.

Issued in Washington, DC, on March 1, 2021, under authority delegated in 49 CFR 1.97.

**Tristan H. Brown,**

*Acting Administrator.*

[FR Doc. 2021–04576 Filed 3–4–21; 8:45 am]

BILLING CODE 4910–60–P

# Proposed Rules

Federal Register
Vol. 86, No. 42
Friday, March 5, 2021

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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 984

**[Doc. No. AMS–SC–20–0075; SC20–984–2 PR]**

## Walnuts Grown in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the California Walnut Board (Board) to decrease the assessment rate established for the 2020–21 and subsequent marketing years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by April 5, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Bianca Bertrand, Management and Program Analyst, or Jeffery Rymer, Marketing Specialist, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Biancam.Bertrand@usda.gov* or *JefferyM.Rymer@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984, (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California walnut handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable walnuts for the 2020–21 marketing year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would decrease the assessment rate from $0.0400 per kernelweight pound assessable walnuts, the rate that was established for the 2017–18 and subsequent marketing years, to $0.0250 per kernelweight pound of assessable walnuts handled for the 2020–21 and subsequent marketing years.

The Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2017–18 and subsequent marketing periods, the Board recommended, and USDA approved, an assessment rate of $0.0400 per kernelweight pound of assessable walnuts handled. That assessment rate would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

On September 11, 2020, the Board unanimously recommended 2020–21 expenditures of $17,990,000 and an assessment rate of $0.0250 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $25,760,000. The proposed assessment rate of $0.0250 is $0.0150 lower than the rate currently in effect. The Board recommended decreasing the assessment rate to reduce the

assessment burden on handlers. Funds from assessments and from the Board's reserve would be sufficient to cover proposed expenses, while maintaining the Board's reserve within the requirements of the Order at no more than two years' budgeted expenses.

The major expenditures recommended by the Board for the 2020–21 marketing year include $1,930,000 for employee expenses, $283,000 for office expenses, $1,600,000 for production research, $825,000 for grades and standards activities, and $13,112,000 for domestic market development. Budgeted expenses for these items in 2019–20 were $1,896,000, $293,000, $2,000,000, $825,000, and $20,700,000, respectively.

The Board derived the recommended assessment rate by considering anticipated expenses; estimated certification (''certification'' means having the walnuts inspected) of 650,000 tons (inshell), based on a three-year average; and the amount of funds available in the authorized reserve.

Pursuant to § 984.51(b) of the Order, the estimated production is converted to a merchantable kernelweight basis using a factor of 0.45 (650,000 tons × 2,000 pounds per ton × 0.45), which yields 585,000,000 kernelweight pounds. At $0.0250 per pound, the new assessment rate should generate $14,625,000 in assessment income, along with funds from the reserve should meet estimated expenses of $17,990,000.

Funds in the reserve (currently $20,133,075) would be kept within the maximum permitted in § 984.69 of the Order of approximately two marketing years' budgeted expenses. The reserve at the end of the 2020–21 marketing year is anticipated to be $13,258,075.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although the modified assessment rate would be effective for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2020–21 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 90 handlers subject to regulation under the Order and approximately 4,400 walnut growers in the production area. The Small Business Administration (SBA) defines small agricultural service firms as those having annual receipts of less than $30,000,000, and small agricultural producers as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

The Board reported that approximately 82 percent of California's walnut handlers shipped merchantable walnuts valued under $30 million during the 2018–2019 marketing year and would, therefore, be considered small handlers according to the SBA definition.

Data from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), show that 86 percent of California farms growing walnuts had walnut sales of less than $1 million.

An alternative computation that includes more recent NASS data starting with three-year average value of utilized production of $1.263 billion for the most recent seasons for which data is available (2017/18 through 2019/20). Dividing that figure by the number of walnut growers (4,400) yields an average annual crop value per grower of approximately $287,045. This figure is well below the SBA small agricultural producer threshold of $1,000,000 in annual sales. Assuming a normal distribution, this provides evidence that a large majority of walnut growers can be considered small agricultural producers according to the SBA definition.

This proposal would decrease the assessment rate collected from handlers for the 2020–21 and subsequent marketing years from $0.0400 to $0.0250 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2020–21 expenditures of $17,990,000 and an assessment rate of $0.0250 per kernelweight pound of assessable walnuts. The proposed assessment rate of $0.0250 is $0.0150 lower than the rate currently in effect. The quantity of assessable walnuts for the 2020–21 marketing year is estimated at 650,000 tons (inshell), which is equivalent to 585,000,000 kernelweight pounds. Thus, the $0.0250 rate should provide $14,625,000 in assessment income. The Board anticipates that the income derived from handler assessments, along with funds from the Board's authorized reserve, would be adequate to cover budgeted expenses for the 2020–2021 marketing year.

The major expenditures recommended by the Board for the 2020–21 marketing year include $1,930,000 for employee expenses, $283,000 for office expenses, $1,600,000 for production research, $825,000 for grades and standards activities, and $13,112,000 for domestic market development. Budgeted expenses for these items in 2019–20 were $1,896,000, $293,000, $2,000,000, $825,000, and $20,700,000, respectively.

The Board unanimously recommended decreasing the assessment rate to reduce the assessment burden on handlers, and recommended utilizing funds from the authorized reserve to help cover the portion of the Board expenses.

Prior to arriving at this budget and assessment rate, the Board considered information from various sources, such as the Board's Executive Committee. The Board discussed alternative expenditure levels, based upon the relative value of various activities to the California walnut industry. The Board recommended the assessment rate of $0.0250 to provide $14,625,000 in assessment income based on the estimation. The Board determined that assessment revenue, along with funds from the authorized reserve would be adequate to cover budgeted expenses for the 2020–21 marketing year.

Based upon information from the National Agricultural Statistics Service (NASS), the grower price reported for walnuts in 2019 was $1,970 per ton ($0.99 per pound) of walnuts. In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate ($0.0250 per kernelweight pound) times the

estimated production (585,000,000 kernelweight pounds), which equals the assessment revenue of $14,625,000. The grower revenue is calculated by multiplying the grower price of $1,970 per ton ($0.99 per kernelweight pound) times the estimated production (585,000,000 kernelweight pounds), which equals the grower revenue of $579,150,000. In the final step, dividing the assessment revenue by the grower revenue, indicates that, for the 2020–21 marketing year, the estimated assessment revenue as a percentage of total grower revenue would be about 2.5 percent.

This proposed rule would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on growers.

The Board's meeting was widely publicized throughout the California walnut industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 11, 2020, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

## PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

**§ 984.347 Assessment rate.**

On and after September 1, 2020, an assessment rate of $0.0250 per kernelweight pound is established for California merchantable walnuts.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–04569 Filed 3–4–21; 8:45 am]

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1026

**[Docket No. CFPB–2021–0003]**

**RIN 3170–AA98**

### Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing to delay the mandatory compliance date of the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule) until October 1, 2022.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2021–0003 or RIN 3170–AA98, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2021-NPRM-QMComplianceDateDelay@cfpb.gov.* Include Docket No. CFPB–2021–0003 or RIN 3170–AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—QM Compliance Date Delay, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

*Instructions:* The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, 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 telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ben Cady, Mark Morelli, Amanda Quester, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Summary of the Proposed Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the ATR/QM Rule's requirements for qualified mortgages (QMs) obtain certain protections from liability. The ATR/QM Rule defines several categories of QMs.

One QM category defined in the ATR/QM Rule is the General QM category. General QMs must comply with the ATR/QM Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. Under the original ATR/QM Rule, the ratio of the consumer's total monthly debt to total monthly income (DTI or DTI ratio) could not exceed 43 percent for a loan to meet the General QM loan definition. In December 2020, the Bureau issued the General QM Final Rule, which amended Regulation Z by replacing the General QM loan definition's DTI limit with a limit based on loan pricing and making other changes to the General QM loan definition.[1] The General QM Final Rule took effect on March 1, 2021, and it provides a mandatory compliance date of July 1, 2021. For covered transactions for which creditors receive an application on or after the March 1, 2021 effective date and before the July 1, 2021 mandatory compliance date, creditors have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Only the revised General QM loan definition is available for applications received on or after July 1, 2021.

The Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. Specifically, the proposal would amend comments 43–2 and 43(e)(4)–2 and –3 to reflect an extension of the mandatory compliance date of the General QM Final Rule by changing the date ''July 1, 2021'' where it appears in those comments to ''October 1, 2022.'' The proposal would also add new comment 43(e)(2)–1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021 but prior to October 1, 2022.

If this proposal is finalized, for covered transactions for which creditors receive an application on or after March 1, 2021 and before October 1, 2022, creditors would have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Under the proposal, the revised regulations would apply to covered transactions for which creditors receive an application on or after October 1, 2022.

The ATR/QM Rule also defines a second, temporary category of QMs for mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QMs and (2) are eligible to be purchased or guaranteed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). This proposed rule refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. In October 2020, the Bureau issued a final rule stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of the General QM Final Rule.[2] Therefore, under the proposal, the Temporary GSE QM loan definition would expire upon the earlier of October 1, 2022 or the date the applicable GSE exits Federal conservatorship (rather than on the current mandatory compliance date of July 1, 2021 or the date the applicable GSE exits Federal conservatorship).

As discussed below, the Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers, particularly those affected by the COVID–19 pandemic. This proposal would not make other changes to the General QM loan definition. The Bureau plans to evaluate the General QM Final Rule's amendments to the General QM loan definition and will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM Final Rule.

The Bureau proposes that a final rule based on this proposal be effective 60 days after publication in the **Federal Register**. The Bureau anticipates that this would make the final rule effective before the current July 1, 2021 mandatory compliance date.

## II. Background

### *A. Dodd-Frank Act Amendments to the Truth in Lending Act and the January 2013 Final Rule*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] amended the Truth in Lending Act (TILA)[4] to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.[5] As amended by the Dodd-Frank Act, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.[6] TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.[7]

A creditor may not be certain whether its ATR determination is reasonable in a particular case. TILA addresses this potential uncertainty by defining a category of loans—called QMs—for which a creditor ''may presume that the loan has met'' the ATR requirements.[8] The statute generally defines a QM to mean any residential mortgage loan for which:

- The loan does not have negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;

[1] 85 FR 86308 (Dec. 29, 2020).

[2] 85 FR 67938 (Oct. 26, 2020).

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[4] 15 U.S.C. 1601 *et seq.*

[5] Dodd-Frank Act sections 1411–12, 1414, 124 Stat. 1376, 2142–49; 15 U.S.C. 1639c.

[6] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.,* 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

[7] 15 U.S.C. 1639c(a)(3).

[8] 15 U.S.C. 1639c(b)(1).

• The total points and fees generally do not exceed 3 percent of the loan amount;

• The income and assets relied upon for repayment are verified and documented;

• The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and

• The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.[9]

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).[10] The January 2013 Final Rule became effective on January 10, 2014. This proposal refers to the January 2013 Final Rule and later amendments [11] to it collectively as the ATR/QM Rule or the Rule. The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QMs, two of which are discussed below.[12]

One category of QMs defined by the ATR/QM Rule consists of General QMs. The January 2013 Final Rule provided that a loan was a General QM if:

• The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [13]

• The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [14]

• The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q; [15] and

• The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.[16]

Appendix Q contained standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QMs. The standards in appendix Q were adapted from guidelines maintained by Federal Housing Administration (FHA) when the January 2013 Final Rule was issued.[17]

A second category of QMs defined by the January 2013 Final Rule, Temporary GSE QMs, consisted of mortgages that (1) comply with the ATR/QM Rule's prohibitions on certain loan features and its limitations on points and fees [18] and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.[19] Unlike for General QMs, the January 2013 Final Rule did not prescribe a DTI limit for Temporary GSE QMs nor did it require use of appendix Q to verify and calculate debt, income, and DTI ratios. The January 2013 Final Rule provided that the Temporary GSE QM loan definition would expire with respect to each GSE when that GSE ceases to operate under conservatorship or on January 10, 2021, whichever occurred first.[20] As discussed further below in part II.C.1, the Bureau issued a final rule in October 2020 extending the expiration of the Temporary GSE QM loan definition.[21]

*B. The Bureau's Assessment of the ATR/QM Rule, Requests for Information, and the ANPR*

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.[22] In January 2019, the Bureau published its ATR/QM Rule Assessment Report.[23] During the period leading up to and following the issuance of the Assessment Report, the Bureau solicited and received substantial public and stakeholder input on issues related to the ATR/QM Rule.[24]

On July 25, 2019, the Bureau issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition.[25]

*C. The Bureau's 2020 QM Final Rules*

In 2020, the Bureau issued three final rules related to the ATR/QM Rule: The Patch Extension Final Rule, the General QM Final Rule, and the Seasoned QM Final Rule. These final rules are discussed below.

1. The Patch Extension Final Rule

The Bureau issued the Patch Extension Final Rule on October 20, 2020. It was published in the **Federal Register** on October 26, 2020.[26] The Patch Extension Final Rule amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z. The Patch Extension Final Rule did not amend the clause

[9] 15 U.S.C. 1639c(b)(2)(A).

[10] 78 FR 6408 (Jan. 30, 2013).

[11] As discussed in part II.C below, the Bureau made several amendments to the ATR/QM Rule in 2020. Prior to 2020, the Bureau made several other amendments to the ATR/QM Rule. *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016); 85 FR 67938 (Oct. 26, 2020).

[12] 12 CFR 1026.43(c), (e). The ATR/QM Rule created several additional categories of QMs. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by HUD (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B) through (E), as was in effect on February 26, 2021. This temporary category of QMs no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.,* 24 CFR 203.19 (HUD rule). Other categories of QMs provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before Apr. 1, 2016).

[13] 12 CFR 1026.43(e)(2)(i) through (iii).

[14] 12 CFR 1026.43(e)(2)(iv).

[15] 12 CFR 1026.43(e)(2)(v), as was in effect on February 26, 2021.

[16] 12 CFR 1026.43(e)(2)(vi), as was in effect on February 26, 2021.

[17] 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

[18] 12 CFR 1026.43(e)(2)(i) through (iii).

[19] 12 CFR 1026.43(e)(4), as was in effect on February 26, 2021.

[20] 12 CFR 1026.43(e)(4)(ii)(A) and 1026.43(e)(4)(iii)(B), as was in effect on February 26, 2021.

[21] 85 FR 67938 (Oct. 26, 2020).

[22] 12 U.S.C. 5512(d).

[23] *See generally* Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf* (Assessment Report).

[24] *See, e.g.,* 82 FR 25246 (June 1, 2017) (request for information in connection with the Bureau's assessment of the ATR/QM Rule); 83 FR 10437 (Mar. 9, 2018) (request for information on the Bureau's rulemaking process); 83 FR 12286 (Mar. 21, 2018) (request for information on the Bureau's adopted regulations and new rulemaking authorities); 83 FR 10437 (Mar. 9, 2018) (request for information on the Bureau's inherited regulations and inherited rulemaking authorities). In response to these requests for information, the Bureau received comments on the ATR/QM Rule from a wide variety of stakeholders.

[25] 84 FR 37155, 37160–62 (July 31, 2019).

[26] 85 FR 67938 (Oct. 26, 2020).

providing that the Temporary GSE QM loan definition expires on the date the applicable GSE exits Federal conservatorship. Therefore, under the Patch Extension Final Rule, the Temporary GSE QM loan definition will expire upon the earlier of the mandatory compliance date of the final amendments to the General QM loan definition or the date the applicable GSE exits Federal conservatorship.

2. The General QM Final Rule

The Bureau issued the General QM Final Rule on December 10, 2020. It was published in the **Federal Register** on December 29, 2020.[27] The General QM Final Rule amended Regulation Z to remove the General QM loan definition's DTI limit (and appendix Q) and replace it with a limit based on the loan's pricing. Under the General QM Final Rule, a loan meets the General QM loan definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than 2.25 percentage points as of the date the interest rate is set. The final rule provided higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The final rule also requires that the creditor consider the consumer's DTI ratio or residual income, income or assets other than the value of the dwelling (including any real property attached to the dwelling) securing the loan, and debts and verify the consumer's income or assets other than the value of the property securing the transaction and debts. The final rule also provides a safe harbor for compliance with the verification requirement if a creditor complies with verification standards in certain manuals listed in the rule.[28]

The General QM Final Rule had an effective date of March 1, 2021 but provided a mandatory compliance date of July 1, 2021. Therefore, for covered transactions for which creditors receive an application on or after March 1, 2021 and before July 1, 2021, creditors have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Under the Patch Extension Final Rule, described above, the Temporary GSE QM loan definition will expire on the mandatory compliance date of the General QM amendments. Therefore, for covered transactions for which creditors receive an application before July 1, 2021, creditors may also originate Temporary GSE QM loans.

3. The Seasoned QM Final Rule

The Bureau issued the Seasoned QM Final Rule on December 10, 2020. It was published in the **Federal Register** on December 29, 2020.[29] The Seasoned QM Final Rule created a new category of QMs for first-lien, fixed-rate covered transactions that have met certain performance requirements over a seasoning period of at least 36 months, are held in portfolio by the originating creditor or first purchaser until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.[30] The Seasoned QM Final Rule took effect on March 1, 2021. Under the Seasoned QM Final Rule, the revised regulations apply to covered transactions for which creditors receive an application on or after this effective date. Thus, due to the seasoning period, no loan will be eligible to become a Seasoned QM until at least 36 months after March 1, 2021.

4. February 2021 Statement Regarding General QM and Seasoned QM Final Rules

On February 23, 2021, the Bureau issued a Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule (Statement).[31] The Statement was published in the **Federal Register** on February 26, 2021.[32] The Statement indicated that the Bureau is considering whether to initiate a rulemaking to revisit the Seasoned QM Final Rule. It also noted that if the Bureau decides to do so, it expects that it will consider in that rulemaking whether any potential final rule revoking or amending the Seasoned QM Final Rule should affect covered transactions for which an application was received during the period from March 1, 2021, until the effective date of such a final rule. The Statement also indicated that the Bureau expected to issue shortly a proposed rule that would delay the July 1, 2021 mandatory compliance date of the General QM Final Rule and that the Bureau will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM Final Rule.

*D. The Effects of the COVID–19 Pandemic on the Mortgage Markets*

The General QM Final Rule acknowledged that the COVID–19 pandemic has had a significant effect on the U.S. economy. In the early months of the pandemic, economic activity contracted, millions of workers became unemployed, and mortgage markets were affected. Although the unemployment rate has declined from a high of 14.8 percent in April 2020 to 6.3 percent in January 2021,[33] unemployment remains elevated relative to the pre-pandemic rate of 3.5 percent in February 2020, and the labor force participation rate remains below pre-pandemic levels, at 61.4 percent in January 2021 versus 63.3 percent in February 2020. The housing market has seen a significant rebound in mortgage-origination activity, buoyed by historically low interest rates and by an increasingly large share of government and GSE-backed loans. However, the share of origination activity outside the government and GSE-backed origination channels has declined from pre-pandemic levels, and mortgage-credit availability for many consumers—including those who would be dependent on the non-QM market for financing—remains tight. The pandemic's impact on both the secondary market for new originations and on the servicing of existing mortgages is described below.

1. Secondary Market Impacts and Implications for Mortgage Origination Markets

The early economic disruptions associated with the COVID–19 pandemic restricted the flow of credit in the U.S. economy, particularly as uncertainty rose in mid-March 2020, and investors moved rapidly towards cash and government securities.[34] The lack of investor demand to purchase mortgages, combined with a large supply of agency mortgage-backed

[27] 85 FR 86308 (Dec. 29, 2020).

[28] *See* comment 43(e)(2)(v)(B)–3.i.

[29] 85 FR 86402 (Dec. 29, 2020).

[30] *Id.*

[31] Bureau of Consumer Fin. Prot., *Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule* (Feb. 23, 2021), *https://www.consumerfinance.gov/documents/9505/cfpb_qm-statement_2021-02.pdf.*

[32] 86 FR 11623 (Feb. 26, 2021).

[33] News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, USDL–21–0158, *The Employment Situation* (Feb. 5, 2021), *https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm,* and *https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm* (charts related to the Feb. 5, 2021 *The Employment Situation* news release).

[34] The Coronavirus Aid, Relief, and Economic Security Act, CARES Act: *Hearing on The Quarterly CARES Act Report to Congress Before the S. Comm. on Banking, Hous., & Urban Affairs,* 116th Cong. 2–3 (2020) (statement of Jerome H. Powell, Chairman, Bd. of Governors of the Fed. Reserve Sys.), *https://www.banking.senate.gov/imo/media/doc/Powell%20Testimony%205-19-20.pdf* (CARES Act Hearing).

securities (MBS) entering the market,[35] resulted in widening spreads between the rates on a 10-year Treasury note and mortgage interest rates.[36] This dynamic made it difficult for creditors to originate loans, as many creditors rely on the ability to profitably sell loans in the secondary market to generate the liquidity to originate new loans. This resulted in mortgages becoming more expensive for both homebuyers and homeowners looking to refinance. After the actions taken by the Board of Governors of the Federal Reserve System (Board) in March 2020 to purchase agency MBS ''in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy,'' [37] market conditions improved substantially.[38] This helped to stabilize the MBS market and resulted in a decline in mortgage rates and a significant increase in refinance activity since the Board's intervention.

Because non-agency MBS [39] are generally perceived by investors as riskier than agency MBS, the market for non-agency and non-QM mortgage credit significantly contracted in the early months of the pandemic. Issuance of non-agency MBS declined by 8.2 percent in the first quarter of 2020, with nearly all the transactions completed in January and February before the COVID–19 pandemic began to affect the economy significantly.[40] Nearly all major non-QM creditors ceased making loans in March and April 2020. The non-QM market has since been recovering, with strong investor demand for non-QM MBS due to better-than-expected performance during the pandemic.[41] Many non-QM creditors—which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have resumed originations, although some continue to maintain tighter underwriting requirements compared to prior to the pandemic.[42] Other creditors that have typically specialized in non-QM financing have shifted their focus to GSE originations due to historically low interest rates and the relative speed and ease with which GSE loans can be originated. Nonetheless, many non-QM creditors and investors expect the non-QM market [43] to continue to strengthen in 2021 and recover to its pre-pandemic levels of production.[44]

As illustrated in Figure 1, the GSEs continue to play a dominant role in the market recovery, with the GSE share of first-lien mortgage originations at 61.9 percent in the third quarter of 2020, up from 45.3 percent in the third quarter of 2019. One analysis found that the FHA and U.S. Department of Veterans Affairs (VA) share declined slightly to 17.4 percent from 19.5 percent a year prior.[45]

[35] Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

[36] Laurie Goodman *et al.,* Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Mar. 26, 2020), *https://www.urban.org/sites/default/files/publication/101926/housing-finance-at-a-glance-a-monthly-chartbook-march-2020.pdf* (*Housing Finance at a Glance*) (on file).

[37] Press Release, Bd. of Governors of the Fed. Reserve Sys., *Federal Reserve announces extensive new measures to support the economy* (Mar. 23, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm.*

[38] CARES Act Hearing, *supra* note 34, at 3.

[39] Non-agency MBS are not backed by loans guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae. This includes securities collateralized by non-QM loans.

[40] Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter,* Inside Mortg. Fin. (Apr. 3, 2020), *https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter* (on file).

[41] Bandon Ivey, *Non-QM MBS Issuers Ready. But Where Are the Loans?,* Inside Mortg. Fin. (Jan. 29, 2021), *https://www.insidemortgagefinance.com/articles/220373-non-qm-originations-and-mbs-ready-to-rebound-after-the-refi-boom* (on file).

[42] Brandon Ivey, *Expanded-Credit Lending Inches Up in Third Quarter,* Inside Mortg. Fin. (Nov. 25, 2020), *https://www.insidemortgagefinance.com/articles/219861-expanded-credit-lending-ticks-up-in-3q-amid-slow-recovery* (on file).

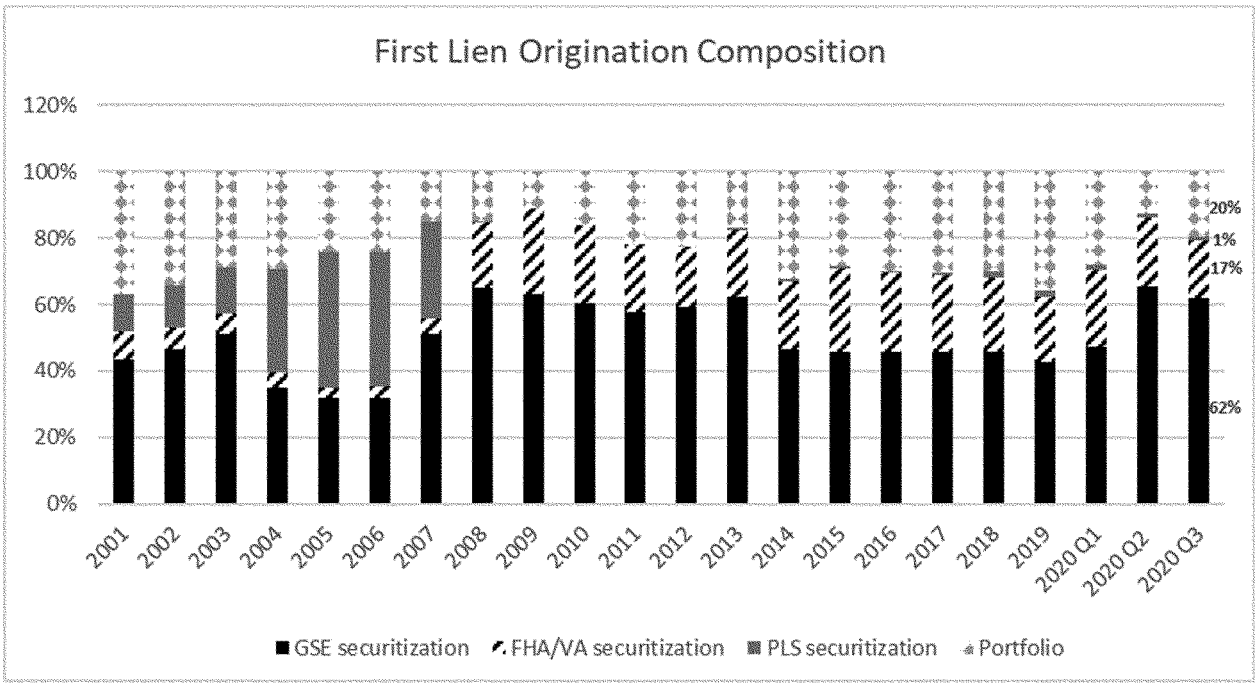
[43] Refers to the non-QM market as defined by the January 2013 Final Rule. With the effective date of the price-based approach in the revised General QM loan definition, many of these loans historically considered non-QM may qualify for QM status after March 1, 2021.

[44] Brandon Ivey, *Outlook on Non-Agency MBS Issuance: Bright and Gloomy,* Inside Mortg. Fin. (Jan. 15, 2021), *https://www.insidemortgagefinance.com/articles/220261-mixed-views-on-the-outlook-for-non-agency-mbs-issuance-in-2021* (on file).

[45] Laurie Goodman *et al.,* Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Jan, 2021), *https://www.urban.org/sites/default/files/publication/103539/housing-finance-at-a-glance-a-monthly-chartbook-january-2021_1.pdf* (*Housing Finance at a Glance*) (on file).

Portfolio lending declined to 19.6 percent in the third quarter of 2020, down from 33.3 percent in the third quarter of 2019, and private label securitizations declined to 1 percent from 1.8 percent a year prior.

Figure 1




**Sources**: Inside Mortgage Finance and the Urban Institute.

2. Servicing Market Impacts and Implications for Origination Markets

In addition to the direct impact on origination volume and composition, the pandemic's impact on the mortgage servicing market has downstream effects on mortgage originations as many of the same entities both originate and service mortgages. Anticipating that a number of homeowners would struggle to pay their mortgages due to the pandemic and related economic impacts, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) [46] in March 2020. The CARES Act provides certain protections for borrowers with federally backed mortgages, such as those whose mortgages are purchased or securitized by a GSE or insured or guaranteed by the FHA, VA, or U.S. Department of Agriculture (USDA). The CARES Act mandated a 60-day foreclosure moratorium for such mortgages and allowed borrowers to request up to 180 days of forbearance due to a COVID–19-related financial hardship, with an option to extend the forbearance period for an additional 180 days.

FHFA recently announced that borrowers with a mortgage backed by the GSEs may be eligible for two additional three-month forbearance extensions, for a total of up to 18 months of forbearance, for certain borrowers who began a COVID–19 forbearance on or before February 28, 2021. On February 16, 2021, FHA, VA, and USDA also provided up to six months of additional mortgage forbearance, in three-month increments, for borrowers who entered forbearance on or before June 30, 2020. FHA, VA, and USDA also extended the foreclosure moratorium on government-insured and guaranteed loans until June 30, 2021, from the previous expiration date of March 31, 2021, and the GSEs announced a similar extension on February 25, 2021.[47] The government agencies also announced an extension in the forbearance enrollment window until June 30, 2021, to provide additional time for borrowers to request a COVID–19 forbearance. FHFA has not yet announced a deadline for borrowers with mortgages backed by the GSEs to enroll in a COVID–19 forbearance plan.

Following the passage of the CARES Act, some mortgage servicers remain obligated to make some principal and interest payments to investors in GSE and Ginnie Mae securities, even if consumers are not making payments.[48]

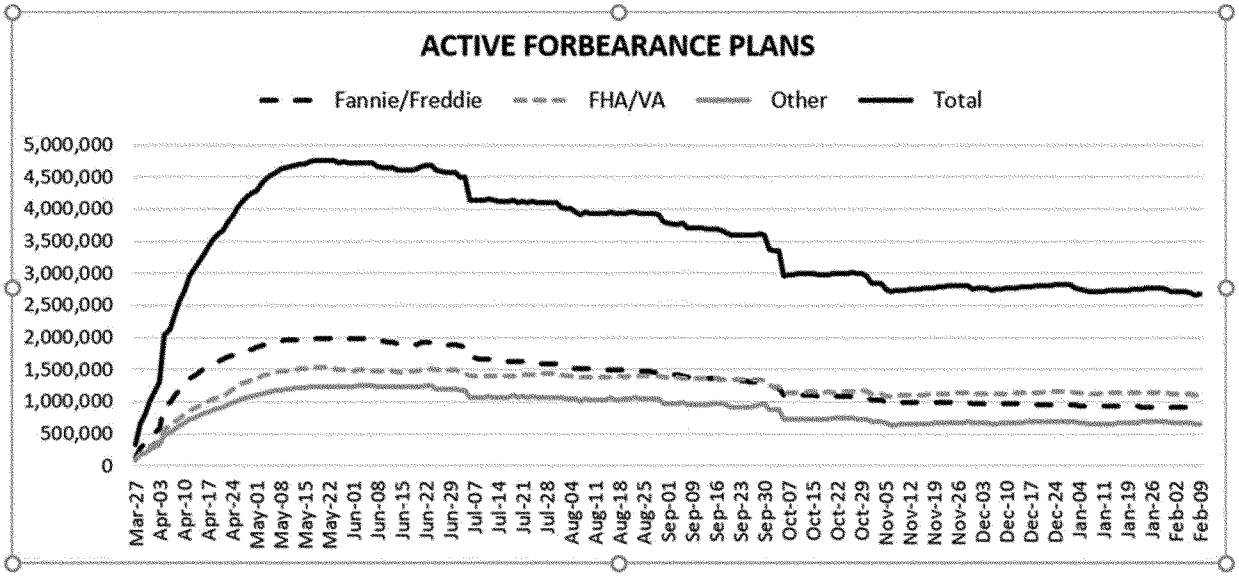
[46] Public Law 116–136, 134 Stat. 281 (2020).

[47] Press Release, The White House, *Fact Sheet: Biden Administration Announces Extension of COVID–19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/. See also* Press Release, Fed. Hous. Fin. Agency, *FHFA Extends COVID–19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx.*

[48] The GSEs typically repurchase loans out of the trust after they fall 120 days delinquent, after which the servicer is no longer required to advance principal and interest, but Ginnie Mae requires servicers to advance principal and interest until the default is resolved. On April 21, 2020, the FHFA confirmed that servicers of GSE loans will only be required to advance four months of mortgage payments, regardless of whether the GSEs repurchase the loans from the trust after 120 days of delinquency. Fed. Hous. Fin. Agency, *FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance* (Apr. 21, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-*

Servicers also remain obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. While servicers are required to hold liquid reserves to cover anticipated advances, early in the pandemic there were significant concerns that higher-than-expected forbearance rates over an extended period of time could lead to liquidity shortages, particularly among many non-bank servicers. While forbearance rates remain elevated at 5.22 percent for the week ending February 14, 2021, they have decreased since reaching their high of 8.55 percent on June 7, 2020.[49] However, the rate of decline has begun to slow, as illustrated in Figure 2 below.

Figure 2




**Source**: Black Knight, Inc.

Because many mortgage servicers also originate the loans they service, many creditors, as well as several warehouse providers,[50] initially responded to the risk of elevated forbearances and higher-than-expected monthly advances by imposing credit overlays—*i.e.,* additional underwriting standards—for new originations. These new underwriting standards included more stringent requirements for non-QM, jumbo, and government loans.[51] An ''adverse market fee'' of 50 basis points on most refinances became effective for new originations delivered to the GSEs on or after December 1, 2020, to cover projected losses due to forbearances, the foreclosure moratoriums, and other default servicing expenses.[52] However, due to refinance origination profits resulting from historically low interest rates, the leveling off in forbearance rates, and actions taken at the Federal level to alleviate servicer liquidity pressure,[53] concerns over non-bank liquidity, and related credit overlays have eased, although Federal regulators continue to monitor the situation.[54] Nonetheless, access to credit for higher-risk but creditworthy consumers remains an ongoing concern given continued uncertainty over the impact of the expiration of foreclosure moratoriums and COVID–19 forbearance plans on the mortgage market as well as lender capacity constraints due to strong refinance demand.

## III. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term ''consumer financial protection function'' to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules,

*Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx.*

[49] Press Release, Mortg. Bankers Ass'n, *Share of Mortgage Loans in Forbearance Declines to 5.22%* (Feb. 22, 2021), *https://www.mba.org/2021-press-releases/february/share-of-mortgage-loans-in-forbearance-declines-to-522-percent.*

[50] Warehouse providers are creditors that provide financing to mortgage originators and servicers to fund and service loans.

[51] Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements,* Inside Mortg. Fin. (Apr. 3, 2020), *https://www.insidemortgagefinance.com/articles/217636-fhava-lenders-raise-fico-credit-score-requirements* (on file).

[52] Press Release, Fed. Hous. Fin. Agency, *Adverse Market Refinance Fee Implementation now December 1* (Aug. 25, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/Adverse-Market-Refinance-Fee-Implementation-Now-December-1.aspx.*

[53] On April 10, 2020, Ginnie Mae released guidance on a Pass-Through Assistance Program whereby Ginnie Mae will provide financial assistance at a fixed interest rate to servicers facing a principal and interest shortfall as a last resort. Ginnie Mae, *All Participant Memorandum (APM) 20–03: Availability of Pass-Through Assistance Program for Participants in Ginnie Mae's Single-Family MBS Program* (Apr. 10, 2020), *https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=105.* On April 7, 2020, Ginnie Mae also announced approval of a servicing advance financing facility, whereby mortgage servicing rights are securitized and sold to private investors. Press Release, Ginnie Mae, *Ginnie Mae approves private market servicerliquidity facility* (Apr. 7, 2020), *https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=194.*

[54] Fin. Stability Oversight Council, U.S. Dep't of the Treasury, *2020 Annual Report,* at 169, *https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf.*

orders, and guidelines.'' [55] Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[56]

*A. TILA*

*TILA section 105(a).* Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[57] A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [58] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[59] The Bureau is proposing to issue this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

*TILA section 129C(b)(2)(A).* TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).[60] The Bureau is proposing to issue this proposed rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

*TILA section 129C(b)(3)(A), (B)(i).* TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[61] In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.[62] The Bureau is proposing to issue this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

*B. Dodd-Frank Act*

*Dodd-Frank Act section 1022(b).* Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[63] TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

## IV. Section-by-Section Analysis

*1026.43 Minimum Standards for Transactions Secured by a Dwelling*

The General QM Final Rule established a March 1, 2021 effective date and a July 1, 2021 mandatory compliance date. Comment 43–2 explains that, for transactions for which a creditor received the consumer's application on or after March 1, 2021, and prior to July 1, 2021, creditors seeking to originate General QMs have the option of complying with either the revised General QM loan definition or the version of the General QM loan definition that was in effect prior to March 1, 2021. This comment also explains that, for transactions for which a creditor received the consumer's application on or after July 1, 2021, creditors seeking to originate General QMs must use the revised General QM loan definition.

Additionally, under the Patch Extension Final Rule, the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship, whichever comes first. Therefore, creditors seeking to originate QMs have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either July 1, 2021 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.

The Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. Specifically, the proposal would amend comment 43–2 to extend the mandatory compliance date of the General QM Final Rule by changing July 1, 2021, where it appears in that comment, to October 1, 2022. As discussed below in the section-by-section analysis of § 1026.43(e)(2), the Bureau is also proposing to add comment 43(e)(2)-1 to clarify that both the General QM loan definition that was in effect prior to the effective date of the General QM Final Rule and the General QM loan definition as amended by the General QM Final Rule are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. Finally, as discussed below in the section-by-section analysis of § 1026.43(e)(4), the Bureau is proposing to change July 1, 2021, where it appears in the commentary to § 1026.43(e)(4), to October 1, 2022.

This proposal would extend by 15 months—from July 1, 2021 to October 1, 2022—the period during which the revised General QM loan definition, the General QM loan definition that was in effect prior to March 1, 2021, and the Temporary GSE QM loan definition all would be available to creditors. Specifically, for transactions for which a creditor received the consumer's application on or after March 1, 2021 and prior to October 1, 2022, creditors seeking to originate General QMs would have the option of complying with either the revised General QM loan definition or the version of the General QM loan definition that was in effect prior to March 1, 2021. For transactions for which a creditor received the consumer's application on or after October 1, 2022, creditors seeking to originate General QMs would have to use the revised General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship—creditors seeking to originate QMs would have the additional option of

[55] 12 U.S.C. 5581(a)(1)(A).

[56] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining ''enumerated consumer laws'' to include TILA).

[57] 15 U.S.C. 1604(a).

[58] 15 U.S.C. 1601(a).

[59] 15 U.S.C. 1639b(a)(2).

[60] 15 U.S.C. 1639c(b)(2)(A).

[61] 15 U.S.C. 1639c(b)(3)(B)(i).

[62] 15 U.S.C. 1639c(b)(3)(A).

[63] 12 U.S.C. 5512(b)(1).

complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.

*Reasons the General QM Final Rule Adopted the July 1, 2021 Mandatory Compliance Date*

The General QM Final Rule adopted a mandatory compliance date of July 1, 2021 because the Bureau concluded that this date would give creditors and the secondary market sufficient time—approximately six months from the date the Bureau expected that final rule to be published in the **Federal Register**—to prepare to comply with the General QM Final Rule's amendments to the ATR/QM Rule.[64] The General QM Final Rule noted that the COVID–19 pandemic had significantly disrupted the mortgage market.[65] Nevertheless, the Bureau finalized a July 1, 2021 mandatory compliance date, taking into consideration market conditions at the time and concerns about the perceived negative effects of the Temporary GSE QM loan definition on the market.

Some commenters on the Patch Extension Proposal[66] and the General QM Proposal[67] cited the pandemic in requesting that the Bureau take different approaches to extending the Temporary GSE QM loan definition and revising the General QM loan definition than the Bureau had proposed. Several commenters on the Patch Extension Proposal asked the Bureau to extend the Temporary GSE QM loan definition to expire several months *after* the date creditors would be required to transition from the old General QM loan definition to the new definition. Among the reasons cited for the request was that the pandemic was straining creditors' resources and personnel, making it more difficult for creditors to adapt to the new definition. A few of these commenters stated that an overlap period, during which creditors could continue to make QMs under the Temporary GSE QM loan definition after the date creditors would be required to transition to the revised General QM loan definition, would reduce the potential that a revised General QM loan definition could disrupt the mortgage market and affect credit access due to unforeseen changes in the economy or the mortgage market due to the pandemic.[68]

The Bureau declined to adopt an overlap period in the Patch Extension Final Rule. The Bureau concluded that establishing an overlap period that extends past the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition would keep the Temporary GSE QM loan definition in place longer than necessary to facilitate a smooth and orderly transition to a revised General QM loan definition. The Bureau stated that it sought to maintain the Temporary GSE QM loan definition only as long as necessary to facilitate a smooth and orderly transition to a revised General QM loan definition, and no longer, because the Bureau concluded that the Temporary GSE QM loan definition has certain negative effects on the mortgage market, including stifling innovation and the development of competitive private-sector approaches to underwriting. The Bureau further concluded that, as long as the Temporary GSE QM loan definition continued to be in effect, the non-GSE private market was less likely to rebound and that the existence of the Temporary GSE QM loan definition may have been limiting the development of the non-GSE private market. For these reasons, the Bureau concluded that it was appropriate for the Temporary GSE QM loan definition to remain in place no longer than the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition.[69] (The Bureau also cited these negative effects in declining to make the Temporary GSE QM loan definition permanent.)[70] With respect to commenters' concerns related to the pandemic, the Bureau stated that conditions in the mortgage market did not justify extending the Temporary GSE QM loan definition past the date creditors would be required to transition from the then-current General QM loan definition to the revised definition, particularly in light of the aforementioned concerns the Bureau stated about the negative effects of the Temporary GSE QM loan definition on the mortgage market.[71]

In the General QM Final Rule, several industry commenters requested a longer implementation period than the six-month period the Bureau proposed. Some of these commenters stated that the implementation period should account for other simultaneous challenges for creditors, including responding to the COVID–19 pandemic and its economic effects. The Bureau concluded that a six-month implementation period would give creditors and secondary market participants enough time to prepare to comply with the final rule, even in light of these challenges. The Bureau stated that current market conditions did not require a longer implementation period.[72]

In addition, two commenters that submitted a joint comment letter on the Patch Extension Proposal stated that the Temporary GSE QM loan definition should remain in place until the Bureau assesses the impacts of the pandemic on mortgage markets, including the decline of the non-QM market and creditors' increasing reliance on GSE and FHA loans.[73] In their comments on the General QM Proposal, some consumer advocate commenters and an individual commenter requested that the Bureau pause the General QM rulemaking in light of the pandemic. The consumer advocate commenters cited the turmoil and economic fallout from the pandemic as a reason to pause the rulemaking.[74]

The Bureau declined to extend the Temporary GSE QM loan definition indefinitely while the Bureau further assessed the impact of the pandemic or to pause the General QM rulemaking in light of the pandemic. However, in the Patch Extension Final Rule, the Bureau noted that, if market conditions were to change or other circumstances were to arise before the Bureau issued the General QM Final Rule, the Bureau could extend the Temporary GSE QM

[64] The Bureau stated that, with respect to the price-based thresholds in revised § 1026.43(e)(2)(vi), the Bureau understood that creditors currently calculate the APR and APOR for mortgage loans. The Bureau also stated that the revised consider requirements generally reflected existing market practices and that creditors currently used and were familiar with the verification standards that the General QM Final Rule adopted. The Bureau also concluded that the General QM Final Rule would be less complex to implement relative to other rules the Bureau has issued, such as the January 2013 Final Rule or TILA–RESPA Integrated Disclosure Rule. 85 FR 86308, 86385–86 (Dec. 29, 2020).

[65] *Id.* at 86313–15.

[66] 85 FR 41448 (July 10, 2020). The Patch Extension Proposal was the proposed rule that the Bureau issued in connection with the Patch Extension Final Rule.

[67] 85 FR 41716 (July 10, 2020). The General QM Proposal was the proposed rule that the Bureau issued in connection with the General QM Final Rule.

[68] 85 FR 67938, 67949 (Oct. 26, 2020).

[69] *Id.* at 67951. Several commenters on the General QM Proposal also requested that the Bureau adopt an overlap period. The Bureau declined to adopt an overlap period in the General QM Final Rule for the same reasons it declined to adopt an overlap period in the Patch Extension Final Rule. 85 FR 86308, 86385 (Dec. 29, 2020).

[70] 85 FR 67938, 67953 n.141 (Oct. 26, 2020).

[71] *Id.* at 67953.

[72] 85 FR 86308, 86385 (Dec. 29, 2020).

[73] 85 FR 67938, 67950 (Oct. 26, 2020).

[74] 85 FR 86308, 86333 (Dec. 29, 2020).

loan definition for a longer period of time.[75]

*Reasons for the Proposed Extension of the Mandatory Compliance Date*

The Bureau is issuing this proposal because it has preliminarily concluded that maintaining the July 1, 2021 mandatory compliance date may leave some struggling homeowners with fewer options by reducing the flexibility of creditors to respond to the effects of the pandemic. In the Patch Extension Final Rule and the General QM Final Rule, the Bureau noted the disruptive effects of the pandemic on the mortgage market but nevertheless concluded that these effects did not justify delaying the requirement to comply with the revised General QM loan definition on July 1, 2021. Upon further evaluation, the Bureau is concerned that it may not have given sufficient weight to the potential risk that mandating the transition to the price-based approach in the revised General QM loan definition on July 1, 2021 could restrict options for consumers struggling with the disruptive effects of the pandemic. The Bureau preliminarily concludes that maximizing flexibility to respond to the effects of the pandemic, by delaying the mandatory compliance date until October 1, 2022, outweighs concerns that an extension of the mandatory compliance date could stifle the development of private-sector approaches to underwriting or a rebound of the non-GSE private market in the near term.

The Bureau also believes that the adverse impact of the pandemic on mortgage markets may persist longer than anticipated at the time of publication of the General QM Final Rule. In particular, as discussed in more detail below, with the extension of certain forbearance programs and foreclosure moratoriums, the Bureau believes that the potential for disruption in the mortgage market will persist well past July 2021.

The Bureau notes that this rulemaking does not reconsider the merits of the price-based approach adopted in the General QM Final Rule. The revised General QM loan definition went into effect on March 1, 2021, and creditors have the option of using that definition to originate QMs. Rather, this proposal addresses the narrower question of whether it would be appropriate in light of the continuing disruptive effects of the pandemic to help facilitate greater creditor flexibility and expanded availability of responsible, affordable credit options for some struggling consumers by allowing creditors to continue making QMs under the DTI-based General QM loan definition and under the Temporary GSE QM loan definition until October 1, 2022.

The Bureau is concerned that requiring creditors seeking to make QM loans to shift to the price-based General QM loan definition and limiting their ability to rely on the Temporary GSE QM loan definition and on the DTI-based General QM loan definition on July 1, 2021 could reduce access to credit, particularly for certain consumer segments. The Bureau has two separate concerns related to access to responsible, affordable mortgage credit, as detailed further below. First, the Bureau believes that ongoing regulatory interventions to assist consumers who may have suffered an income disruption related to the pandemic—such as COVID–19 forbearance plans and foreclosure moratoriums—and potential disruptions in the market when those interventions expire may warrant an extension of the mandatory compliance date. Second, the Bureau has concerns about mortgage credit availability for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic, and such concerns may warrant an extension of the mandatory compliance date.

*Impact of foreclosure moratoriums and the expiration of COVID–19 forbearance plans.* The Bureau is issuing this proposal because it is concerned that the impact of the eventual expiration of foreclosure moratoriums and COVID–19 forbearance plans described in part II.D above has the potential to lead to additional disruptions in the mortgage markets. In particular, the Bureau is concerned that such expirations may create the potential for heightened delinquencies and foreclosures for consumers who continue to suffer disruptions in their income due to the COVID–19 pandemic. The Bureau is concerned that, while many consumers currently in forbearance plans can be assisted through payment deferrals and loan modifications, there will be some consumers who will be unable to either resume their mortgage payment or sustain a modified loan payment and will be forced to either sell their homes or be placed into foreclosure after the expiration of the foreclosure moratoriums. The Bureau is concerned that it may not have given sufficient weight to these issues in mandating that creditors comply with the price-based approach on July 1, 2021. In addition, the Bureau believes that the extension of certain forbearance programs and foreclosure moratoriums may result in these effects continuing longer than the Bureau anticipated at the time of the General QM Final Rule.

The Bureau preliminarily concludes that extending the mandatory compliance date of the General QM Final Rule to October 1, 2022 will provide additional flexibility to creditors originating QM loans. Specifically, creditors would be permitted to originate General QM loans under the price-based General QM loan definition that took effect on March 1, 2021, and would also be allowed to originate General QM loans in accordance with the DTI-based General QM loan definition that was in effect prior to March 1, 2021, as well as Temporary GSE QM loans, for an additional 15 months. As discussed in further detail in this section, the Bureau is issuing this proposal because providing such flexibility may benefit struggling consumers who are forced to sell their property to avoid foreclosure by helping to ensure that potential purchasers continue to have access to mortgage credit. The following section (entitled *Concerns regarding access to mortgage credit for consumers*) describes the Bureau's concerns that despite record origination volume, access to credit has remained relatively tight for consumers with weaker credit. Moreover, this proposal may also provide some consumers with additional opportunities to refinance into historically low interest rates.

The Bureau is concerned that the potential impact of the COVID–19 pandemic on the mortgage market may continue for longer than anticipated at the time the Bureau issued the General QM Final Rule, and so could warrant additional flexibility in the QM market to ensure creditors are able to accommodate struggling consumers. Specifically, as discussed in part II.D, the expiration dates for the foreclosure moratoriums and enrollment dates for the COVID–19 forbearance plans have been extended for loans guaranteed or insured by the GSEs, FHA, VA, and USDA since the publication of the Patch Extension Final Rule and the General QM Final Rule. Both the GSEs and the government agencies have also lengthened the permissible forbearance period from the 12 months mandated in the CARES Act to up to 18 months for certain loans. Under these revised timelines, most COVID–19 forbearance plans will expire no later than June 30, 2022.

The Bureau is concerned that the combined impact of the expiration of the foreclosure moratoriums and the expiration of the COVID–19 forbearance

[75] 85 FR 67938, 67953 (Oct. 26, 2020).

plans creates the potential for heightened delinquencies and foreclosures for consumers who continue to suffer disruptions in their income due to the COVID–19 pandemic. While many consumers currently in forbearance plans can be assisted through payment deferrals and loan modifications, there will be some consumers who will be unable to sustain a modified loan payment and will be forced to sell their homes to avoid foreclosure. While rising house prices have increased overall home equity, which will assist consumers who need to sell their homes upon the expiration of their forbearance plan, more vulnerable consumers are likely to have less equity in their homes than the general population. One analysis indicated that 10.4 percent of mortgage consumers in forbearance have less than 10 percent equity in their homes to pay for closing costs, and this share increases to 15.3 percent after taking into account 12 months of deferred interest during the forbearance period.[76] If consumers have deferred payments of taxes and insurance, their equity position will have eroded even further. Government loans, which tend to have higher loan-to-value ratios (LTVs) and serve a higher-risk population, have a median LTV at origination of 96.5 percent as compared to 75 percent LTV for mortgage borrowers overall.[77] Accordingly, nearly 20 percent of FHA and VA mortgages have less than 10 percent equity, and the share increases to 26 percent when taking into account deferred interest.[78] While some research suggests borrowers with government loans have an average 22 percent equity buffer given recent home price appreciation, certain borrower segments and States and localities may remain at risk of heightened foreclosure activity.[79] While the foreclosures and distressed sales are expected to remain far below the levels experienced during the 2008 financial crisis,[80] the Bureau preliminarily concludes that extending the mandatory compliance date until October 1, 2022, may assist some consumers who need to sell their homes by providing creditors additional flexibility to continue originating new QM loans under the Temporary GSE QM loan definition and under the DTI-based General QM loan definition, as well as under the price-based approach in the revised General QM loan definition. Consumers who need to sell their homes may benefit from a broader QM definition that encourages more potential purchasers to enter the market and buy properties that might otherwise go into foreclosure. Extending the Temporary GSE QM loan definition may also provide additional flexibility for the GSEs to develop and modify potential pre-foreclosure sale products—such as short sale and deed-in-lieu of foreclosure programs—to respond to a potential increase in distressed sales as necessary.

Under the revised timelines, most COVID–19 forbearance plans will expire no later than June 30, 2022, at which point the availability of the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 could help alleviate adverse impacts on consumers struggling to keep their homes upon exiting their forbearance plan. Extending the mandatory compliance date to October 1, 2022, as the Bureau proposes, would make these additional QM definitions available for three months after the latest date on which most COVID–19 forbearance plans are set to expire. The Bureau preliminarily concludes that three months is a sufficient period of time for creditors to use the additional QM flexibility to assist consumers whose COVID–19 forbearance plans expire on June 30, 2022 and whose incomes may not have recovered enough to sustain their pre-pandemic mortgage payment or a modified mortgage payment.

The Bureau is also concerned that allowing the Temporary GSE QM loan definition to expire on July 1, 2021 would limit the ability of the GSEs to originate new loans and could restrict their flexibility to develop new refinance programs to address emerging consumer needs during a period of heightened market uncertainty. In the General QM Final Rule, the Bureau estimated that the price-based approach in the revised General QM loan definition would preserve access to credit relative to the status quo with the DTI-based General QM loan definition and the Temporary GSE QM loan definition. Nevertheless, some loans that would be QMs under the Temporary GSE QM loan definition or the DTI-based General QM loan definition would not be eligible under the revised, price-based General QM loan definition. Maintaining the availability of all three QM definitions until October 1, 2022 would maximize refinance options for consumers who have been struggling to make their mortgage payments or who under more ordinary circumstances likely have the ability to repay their loans but who may be underwater on their mortgage as a result of the unique circumstances of the pandemic.

As discussed earlier and illustrated in Figure 1, the GSEs tend to play a dominant role during economic downturns and recoveries, and additional origination flexibilities may prove helpful in the current market recovery by allowing consumers additional opportunities to refinance into historically low interest rates. For example, during the 2008 financial crisis, FHFA established the Home Affordable Refinance Program (HARP) to help homeowners who were unable to refinance their loans due to a decline in their home value. Approximately 3.5 million consumers benefited from HARP, and FHFA found that consumers who refinanced through HARP have had lower delinquency rates compared with consumers who were eligible for HARP but did not refinance through the program.[81] When HARP expired in 2018, FHFA replaced it with the High-LTV Refinance Programs. These programs allow performing high-LTV (≤97 percent) borrowers to access rate-and-term refinances without providing full income documentation. These refinances may currently obtain QM status through the Temporary GSE QM loan definition. As discussed earlier, while the Bureau does not expect widespread home price declines akin to the 2008 financial crisis, some segments of consumers and localities could benefit from the existing high-LTV refinance programs. More generally, extending the Temporary GSE QM loan definition would also help ensure that the ATR/QM Rule does not impair FHFA and the GSEs from exercising the flexibility to tailor existing programs to meet future market changes specific to the COVID–19 pandemic and the regulatory interventions discussed earlier. The Bureau preliminarily concludes that it would be appropriate to provide such loans with the QM presumption of compliance with the ATR requirements under the Temporary GSE QM loan definition, given that such

[76] Black Knight, Inc., *Deferred Payments During Forbearance Beginning To Erode Equity Positions* (Feb. 3, 2021) *https://www.blackknightinc.com/blog-posts/deferred-payments-during-forbearance-beginning-to-erode-equity-positions/* (*Deferred Payments*).

[77] Ginnie Mae, *Global Markets Analysis Report* (Jan. 2021), *https://www.ginniemae.gov/data_and_reports/reporting/Documents/global_market_analysis_jan21.pdf.*

[78] *Deferred Payments, supra* note 76.

[79] Urban Inst., *The Predicted Foreclosure Surge Likely Won't Happen, Even among Financially Vulnerable Borrowers* (Feb. 11, 2021), *https://www.urban.org/urban-wire/predicted-foreclosure-surge-likely-wont-happen-even-among-financially-vulnerable-borrowers.*

[80] *Id.*

[81] Fed. Hous. Fin. Agency, *Home Affordable Refinance Program (HARP), https://www.fhfa.gov/PolicyProgramsReearch/Programs/Pages/HARP.aspx* (last visited Feb. 23, 2021).

programs would be implemented while the GSEs are under the conservatorship of FHFA.

The Bureau preliminarily concludes that extending the mandatory compliance date of the General QM Final Rule to October 1, 2022 will benefit consumers by providing additional access to responsible, affordable mortgage credit and flexibility for the GSEs to create and modify programs to address emerging consumer needs. However, the Bureau also recognizes that the anticipated effects of this proposal may be affected by policies, agreements, or legislation created by parties other than the Bureau. For example, the Preferred Stock Purchase Agreements (PSPAs) for Fannie Mae and Freddie Mac or restrictions of FHFA, as regulator and conservator of the GSEs, may restrict the GSEs from purchasing loans with certain attributes or characteristics.[82] To the extent that other factors prevent the GSEs from using the additional flexibilities provided by the extension of the mandatory compliance date and the Temporary GSE QM loan definition, the impacts of this proposed rule may be smaller than they otherwise would be. Nonetheless, the Bureau is issuing this proposal because it is concerned that mandating that creditors comply with the revised General QM loan definition on July 1, 2021 could limit options for consumers struggling due to the disruptive effects of the pandemic, and because the Bureau is unable to predict how such agreements or restrictions might change in the future. Accordingly, the Bureau has preliminarily concluded that the benefits of continued access to credit for consumers during the pandemic warrant the additional flexibility provided to creditors through this proposed rule.

As noted above, in the Patch Extension Final Rule and the General QM Final Rule, the Bureau declined to extend the Temporary GSE QM loan definition beyond the July 1, 2021 mandatory compliance date of the amendments to the General QM loan definition. The Bureau raised concerns about potential harms from leaving the Temporary GSE QM loan definition in place longer than necessary, including stifling innovation and the development of competitive private-sector approaches to underwriting. The Bureau also stated that, as long as the Temporary GSE QM loan definition continued to be in effect, the non-GSE private market was less likely to rebound and that the existence of the Temporary GSE QM loan definition may have been limiting the development of the non-GSE private market. For these reasons, the Bureau concluded that it was appropriate for the Temporary GSE QM loan definition to remain in place no longer than the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition.[83] The Bureau concluded that the mandatory compliance date, and the expiration of Temporary GSE QM loan definition should occur on July 1, 2021. However, the Bureau now preliminarily concludes that the need to provide maximum flexibility to address the effects of the pandemic outweighs any, likely minor, inhibiting effect that extension of the Temporary GSE QM loan definition could have on new access to credit resulting from new private sector underwriting approaches or a rebound of the non-GSE private market during the same period. Moreover, market participants looking to adopt innovative underwriting approaches or expand the non-GSE market would have the option to use the price-based General QM loan definition even if the mandatory compliance period were delayed until October 1, 2022. Accordingly, the Bureau preliminarily concludes that leaving the Temporary GSE QM loan definition in place until October 1, 2022 may be appropriate.

*Concerns regarding access to mortgage credit for consumers.* The Bureau is also proposing to extend the mandatory compliance date of the General QM Final Rule to avoid a reduction in credit access for certain consumers who have been unable to purchase or refinance due to the effects of the pandemic on the origination market. As described further below, the Bureau is concerned that despite the record origination volumes, access to low interest-rate refinances and purchase mortgages in these unique circumstances may be less widely available for consumers with weaker credit relative to consumers with stronger credit. The Bureau is concerned that requiring creditors to transition to the price-based General QM loan definition on July 1, 2021 and eliminating the Temporary GSE QM loan definition and the DTI-based General QM loan definition at that time could exacerbate these credit access concerns.

As illustrated in Figure 3, first-lien mortgage originations exceeded $4 trillion in 2020, surpassing the prior record of $3.725 trillion set in 2003,[84] and originators have faced significant capacity and resource constraints given strong refinance demand. In addition, the Board has undertaken extraordinary interventions to purchase agency MBS in large quantities since March of 2020, which has exerted downward pressure on MBS yields and thus increased liquidity for creditors who rely on the ability to sell GSE and government loans in the secondary markets.[85]

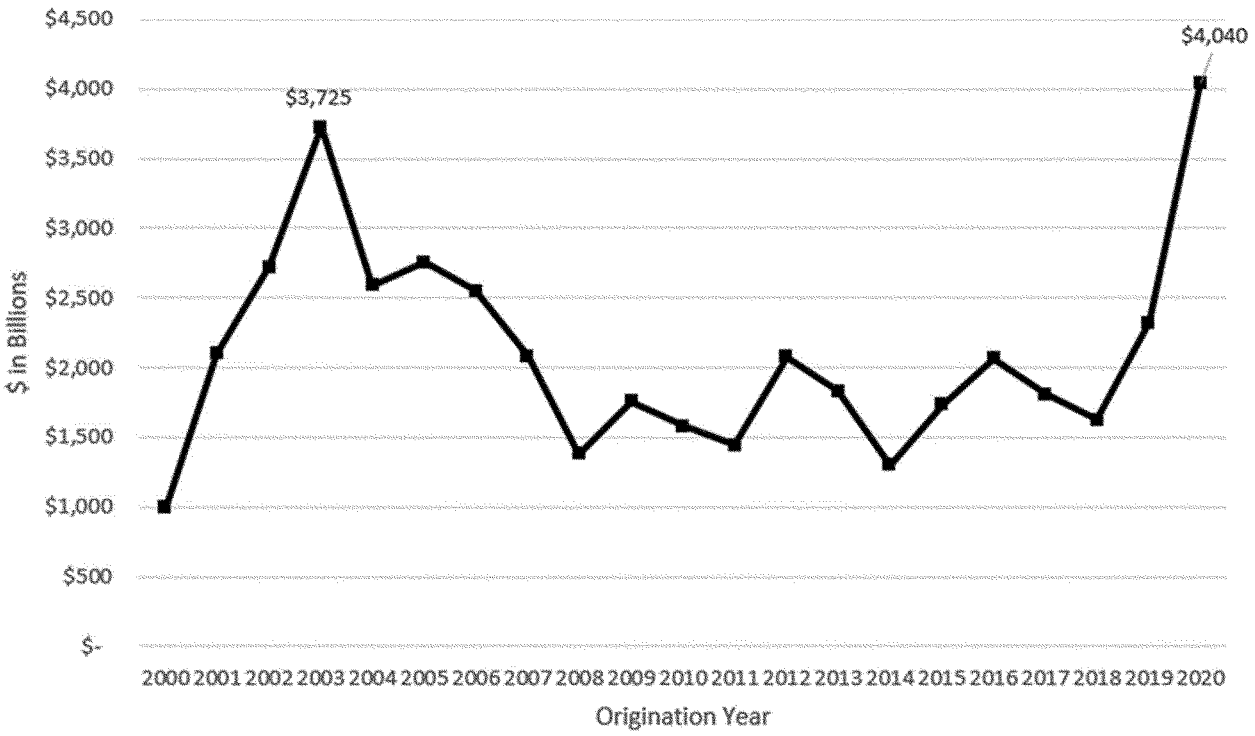
[82] On January 14, 2021, the U.S. Department of the Treasury and the FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions.

[83] 85 FR 67938, 67951 (Oct. 26, 2020). Several commenters on the General QM Proposal also requested that the Bureau adopt an overlap period. The Bureau declined to adopt an overlap period in the General QM Final Rule for the same reasons it declined to adopt an overlap period in the Patch Extension Final Rule. 85 FR 86308, 86385 (Dec. 29, 2020).

[84] Inside Mortg. Fin., *One for the Ages: Home Lenders Set New Production Record of $4T-Plus* (Jan. 27, 2021) *https://www.insidemortgagefinance.com/articles/220379-one-for-the-ages-home-lenders-set-new-production-record-of-4t-plus* (on file).

[85] *Housing Finance at a Glance, supra* note 36.

Figure 3: First Lien Mortgage Originations by Year




Source: Inside Mortgage Finance

The combination of mortgage origination capacity constraints and increased liquidity in the agency MBS market has led creditors to focus on GSE originations, which are quicker to close and are generally considered less risky than FHA-insured mortgages and loans originated in the private markets. In the short-run, these pandemic-related capacity constraints could cause the supply of mortgage credit to fall short of demand from otherwise creditworthy consumers who likely have the ability to repay. In response, creditors may impose credit overlays or, more commonly, increase pricing margins [86] for certain products that are time-consuming to underwrite or for higher-risk consumers, including margin increases beyond the risk-based pricing adjustments typically charged in a market without creditor capacity constraints. Creditors may raise prices disproportionately for loans that either take longer to close or have a lower probability of closing to compensate for the fact that such loans reduce a creditor's total expected origination volume within a given time period. Overall, these short-run responses to the pandemic-related capacity constraints could have the effect of temporarily pricing some creditworthy consumers out of the market or delaying their ability to obtain a mortgage they otherwise could repay.

Figure 2 illustrates the strong growth of GSE lending in recent months, showing GSE volume in the third quarter of 2020 was at 61.9 percent, up from 45.3 percent a year prior. By contrast, portfolio lending declined significantly to 19.6 percent in the third quarter of 2020, compared to 33.3 percent in the third quarter of 2019. Private label securitizations declined to 1 percent from 1.8 percent a year prior, and even the FHA and VA share (whose MBS are beneficiaries of the Board's agency MBS purchases) are down slightly to 17.4 percent from 19.5 percent a year prior.[87]

Even within the GSE and government markets, some consumers may face reduced access to credit, as capacity constraints cause mortgage originators to focus on consumers with the strongest credit.[88] Figure 4 illustrates potential differences in new credit originated for consumers with credit scores above and below a 700 credit score in 2020.[89] Year-over-year, mortgage balances for consumers with a credit score of at least 700 have increased by 10 percent by the end of 2020, while mortgage balances for consumers with a credit score below 700 have decreased by nearly 2 percent. In contrast, the auto financing sector has a far smaller disparity that also remained more consistent throughout the year.

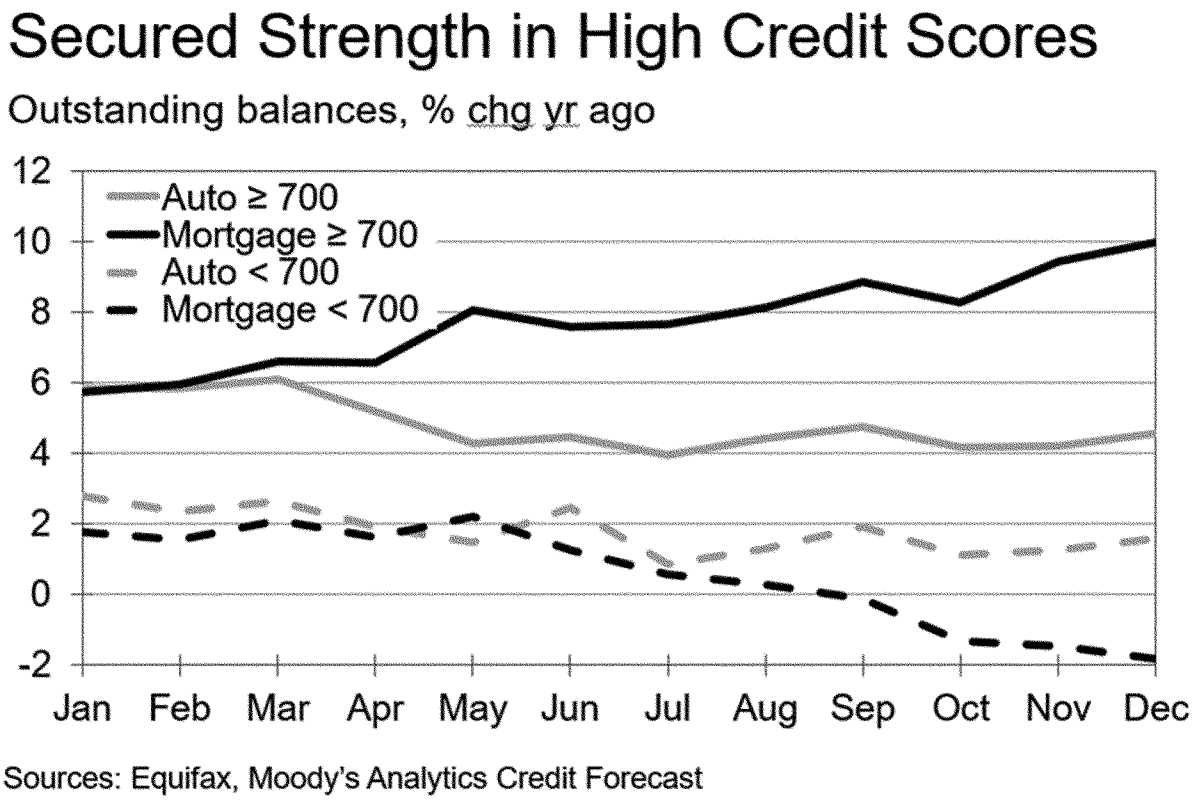
[86] Pricing margins refer to the difference between the rate a creditor charges and the price at which a creditor can sell the loan in the secondary market. In addition to risk-based pricing adjustments that are independent of any adjustments charged in the secondary market, a creditor may charge additional margin to compensate for the time and expense of underwriting.

[87] *Id.*

[88] Nat'l Mortg. News, *Opinion: The originations feast and credit famine* (Oct. 4, 2020), *https://www.nationalmortgagenews.com/opinion/the-originations-feast-and-credit-availability-famine* (on file).

[89] Moody's Analytics Credit Forecast.

Figure 4




As noted, the Bureau is concerned about the July 1, 2020 mandatory compliance date of the General QM Final Rule because requiring creditors to transition to the price-based General QM loan definition on July 1, 2021, and eliminating the Temporary GSE QM loan definition and the DTI-based General QM loan definition, could exacerbate these pandemic-related concerns about access to credit for some consumers. In the General QM Final Rule, the Bureau stated that maintaining access to responsible, affordable mortgage credit after the expiration of the Temporary GSE QM loan definition was a critical policy goal, and the Bureau found that the price-based approach would further this goal.[90] The Bureau concluded that the General QM Final Rule's pricing thresholds best balanced consumers' ability to repay with ensuring access to responsible, affordable mortgage credit, including for minority consumers.[91] However, compared to a market in which creditors could originate QM loans under the price-based approach in the revised General QM loan definition, the DTI-based General QM loan definition, or under the Temporary GSE QM loan definition, there would be a slightly smaller QM market and potentially reduced access to credit in a market in which creditors were limited to making General QM loans under the revised, price-based General QM loan definition. Extending the mandatory compliance date would retain flexibility for creditors to originate loans as QMs under the Temporary GSE QM loan definition and revised General QM loan definition for a longer period of time. Given the mortgage origination capacity concerns and the concentration of loans in the GSE channel described above, the Bureau preliminarily concludes it is appropriate to extend the mandatory compliance date of the General QM Final Rule to October 1, 2022 to ensure broad credit access under the particular circumstances arising from the COVID–19 pandemic, including for loans in the GSE channel.

In addition, the Bureau preliminarily concludes that retaining a broad QM market until October 1, 2022, in which creditors could make QMs under the price-based approach in the revised General QM loan definition, the DTI-based General QM loan definition, or the Temporary GSE QM loan definition, would not significantly increase the likelihood that risky loans would inappropriately receive a rebuttable presumption of compliance with ability to repay requirements. In general, the Bureau expects that creditors will use comparable underwriting for loans within the DTI-based General QM loan definition and the Temporary GSE QM loan definition between July 1, 2021 and October 1, 2022 as they did for loans originated using those same definitions prior to March 1, 2021. As a result, the Bureau expects QM loans originated between July 1, 2021 and October 1, 2022, using the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition, will have comparable risk levels to QM loans originated under those same definitions prior to March 1, 2021.

Moreover, given the above-noted concerns about access to credit for certain consumers in the existing market, the Bureau has concerns about requiring creditors to transition to the price-based approach in the General QM loan definition on July 1, 2021. In part V.B.5 of the General QM Final Rule,[92] the Bureau acknowledged that overall market spreads may expand and tighten over time. The Bureau noted that it monitors changing market and economic conditions, and it could consider changes to the pricing thresholds if circumstances warrant. The Bureau is concerned that, in the

[90] 85 FR 86308, 86335 (Dec. 29, 2020).

[91] *Id.* at 86337.

[92] *Id.* at 86339.

unique circumstances arising from the COVID–19 pandemic, the combined effects of strong refinance demand, capacity constraints, and the volume of consumers with COVID–19 forbearance plans could incentivize creditors to increase mortgage interest rate spreads for some higher-risk consumers relative to consumers with cleaner credit. The Bureau is concerned that this unique situation may result in temporarily reduced credit access for some higher-risk yet creditworthy consumers than otherwise would be the case. Specifically, loans that exceed the pricing thresholds in the General QM Final Rule—including loans with DTI ratios below 43 percent and GSE loans—will generally not be eligible for QM status if the application is received on or after the mandatory compliance date of the General QM Final Rule. This includes some manufactured housing loans with loan amounts in excess of $110,260. While some of these consumers may be able to obtain QM loans due to creditor pricing responses or through other available QM loan categories, and other consumers may obtain non-QM loans at potentially higher prices, the Bureau is concerned that a portion of these consumers may not be able to obtain a mortgage at all. The Bureau anticipates that as mortgage rates increase, capacity constraints will be lifted, originator profitability will decline, and these access to credit concerns will eventually ease. Accordingly, given that the timing of these events is uncertain, the Bureau has preliminarily concluded that extending the mandatory compliance date to October 1, 2022 will assist consumers by avoiding unnecessarily constraining the mortgage market during a period of heightened volatility and stress due to the COVID–19 pandemic.

The Bureau requests comment on all aspects of its proposal to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. The Bureau requests comment on whether the market is likely to experience disruptions after the expiration of forbearance programs and foreclosure moratoriums and whether delaying the mandatory compliance date could provide additional flexibility in responding to those disruptions. The Bureau also requests comment on the extent to which some consumer segments are experiencing impaired access to credit and on whether delaying the mandatory compliance date could help address such access-to-credit concerns. The Bureau requests comment on whether the mandatory compliance date should be extended and, if so, whether the extension should be longer or shorter than the proposed delay to October 1, 2022.

The Bureau also proposes that a final rule based on this proposal be effective 60 days after publication in the **Federal Register**. The Bureau anticipates that this would make the final rule effective before the current July 1, 2021 mandatory compliance date.

*Proposed Revisions to Commentary*

For the reasons described above, the Bureau is proposing to amend comment 43–2 to reflect an extension of the mandatory compliance date of the price-based General QM loan definition to October 1, 2022.

Currently, comment 43–2 states that the Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Comment 43–2 states further that compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after July 1, 2021 (mandatory compliance date). Comment 43–2 states further that, for a given transaction for which a creditor received an application on or after March 1, 2021 but prior to July 1, 2021, a person has the option of complying either with 12 CFR part 1026 as it is in effect, or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments.

For the reasons described above, the Bureau proposes to change the references to July 1, 2021 in this comment to October 1, 2022. The proposal would not amend the portion of comment 43–2 that describes how to determine the application date. The explanations in part VII.C of the Supplementary Information to the General QM Final Rule regarding how the effective date, optional early compliance period, and mandatory compliance date apply to transactions would remain accurate, except that references to July 1, 2021 would apply to October 1, 2022 instead.[93]

[93] 85 FR 86308, 86386–87 (Dec. 29, 2020).

*43(e) Qualified Mortgages*

*43(e)(2) Qualified Mortgages Defined—General*

The Bureau is proposing to add comment 43(e)(2)–1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021 but prior to October 1, 2022. Specifically, proposed comment 43(e)(2)–1 references comment 43–2 and explains that, prior to the effective date of the 2021 General QM Amendments, § 1026.43(e)(2) provided a QM definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation may not exceed 43 percent. Proposed comment 43(e)(2)–1 further explains that the 2021 General QM Amendments removed that requirement and replaced it with the APR thresholds in § 1026.43(e)(2)(vi), among other revisions. Proposed comment 43(e)(2)–1 explains that both the QM definition in § 1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the General QM loan definition in § 1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. Proposed comment 43(e)(2)–1 cross-references comment 43–2 for an explanation of how creditors determine the date the creditor received the consumer's application for purposes of that comment.

*43(e)(4) Qualified Mortgage Defined—Other Agencies*

Comment 43(e)(4)–2 currently provides that covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of July 1, 2021, continue to be QMs, including those covered transactions that were consummated on or after July 1, 2021. The headers for comments 43(e)(4)–2 and –3 refer to July 1, 2021 as the General QM Final Rule's mandatory compliance date.

For the reasons described above, the Bureau proposes to change the references to July 1, 2021 in comment 43(e)(4)–2 and in the headers for comments 43(e)(4)–2 and –3 to October 1, 2022.

## V. Dodd-Frank Act Section 1022(b) Analysis

### *A. Overview*

As discussed above, this proposal would delay the mandatory compliance date of the General QM loan definition from July 1, 2021 to October 1, 2022. In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with the prudential regulators and other appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

### *B. Data and Evidence*

The discussion in this impact analysis relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA [94] data, as well as other publicly available sources. In particular, the data and evidence published in the Bureau's General QM Final Rule inform this analysis. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the proposed rule, including the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. While these data allow the Bureau to estimate the number of mortgage loans historically that would have satisfied the different QM definitions applicable under the baseline or the proposal, the Bureau cannot estimate with precision how consumers may respond to changes in the QM definitions by obtaining alternative loan products or how creditors may respond by changing loan pricing or product offerings. The Bureau seeks additional information or data which could inform quantitative estimates of such consumer or creditor responses. The Bureau seeks comment on its analysis and additional information or data which could inform quantitative estimates of the number of consumers obtaining GSE-eligible loans which do not satisfy the consider and verify requirements in the revised General QM loan definition.

### *C. Description of the Baseline*

The Bureau considers the benefits, costs, and impacts of the proposal against the baseline in which the Bureau takes no action and compliance with the revised General QM loan definition becomes mandatory on July 1, 2021, after which the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire and can no longer be used by creditors to obtain QM status on new mortgage loans. Under the proposal, the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 can continue to be used until October 1, 2022, the new mandatory compliance date of the revised General QM loan definition. As a result, the proposal's direct market impacts would occur only during the period between July 1, 2021 and October 1, 2022. The impact analyses assume the GSEs will remain in conservatorship for the duration of this period, thus allowing creditors to use the Temporary GSE QM loan definition.

Under the baseline, when the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire on July 1, 2021, conventional loans could only receive QM status under the Bureau's rules by underwriting according to the revised General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act,[95] or the Seasoned QM definition. The revised General QM loan definition, which would be the only type of QM available to larger creditors following the mandatory compliance date, generally requires loans to be priced less than 2.25 percentage points above APOR.[96]

The Bureau anticipates that when the mandatory compliance date is reached, the main loans affected would be those priced 2.25 percentage points or higher above APOR that are either conventional loans with DTI ratios at or below 43 percent (Under-43-Percent-DTI conventional loans) or GSE-eligible loans. Retaining the July 1, 2021 mandatory compliance date would affect these loans because they are currently originated as QM loans due to either the General QM loan definition that was in effect prior to March 1, 2021 or the Temporary GSE QM loan definition but, absent changes in pricing, could not be originated as QM loans and may not be originated at all after the mandatory compliance date.

The Bureau's analysis of the market under the baseline focuses on Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR because the Bureau estimates most loans newly obtaining QM status due to the proposal fall within those categories. A smaller number of GSE-eligible loans would not fall within the revised General QM loan definition because they do not satisfy the consider and verify requirements in the revised General QM loan definition. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. These loans are largely restricted to certain streamlined refinance loans offered by the GSEs, and the Bureau estimates that in the current market such loans are considerably less numerous than Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR.[97] However,

[94] HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. *See* Bureau of Consumer Fin. Prot., *Mortgage Data (HMDA), https://www.consumerfinance.gov/data-research/hmda/.*

[95] Public Law 115–174, 132 Stat. 1296 (2018).

[96] The comparable thresholds are 6.5 percentage points over APOR for loans priced under $66,156, 3.5 percentage points over APOR for loans priced under $110,260 but at or above $66,156, and 6.5 percentage points over APOR for loans for manufactured housing priced under $110,260. 12 CFR 1026.43(e)(2)(vi)(A) through (D).

[97] As of Q3 2020, only 105 loans had been originated through the GSEs' High-LTV Refinance

demand for such loans could increase if housing market conditions deteriorate.

*D. Potential Benefits and Costs to Covered Persons and Consumers*

1. Benefits to Consumers

The primary benefit to consumers of the proposal is the availability of conventional QM loans priced 2.25 percentage points or higher above APOR—including both Under-43-Percent-DTI conventional loans and GSE-eligible loans—during the period from July 1, 2021 to October 1, 2022. Relative to the baseline, the Bureau estimates that between July 1, 2021 and October 1, 2022, approximately 33,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal due to the availability of the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition.[98] While many of these consumers may obtain mortgages of some kind under the baseline, the largest benefits to consumers accrue to the consumers who would obtain a conventional QM loan under the proposal but would not obtain a mortgage under the baseline.

Under the baseline, some of these 33,000 consumers may be able to obtain General QM loans priced below 2.25 percentage points over APOR due to creditor responses to the General QM Final Rule or obtain QM loans under the Small Creditor QM definition. Others may instead obtain FHA loans, likely paying higher total loan costs as discussed in the General QM Final Rule. Finally, a portion of these consumers may obtain non-QM loans under the baseline, but the Bureau expects some consumers may not be able to obtain a mortgage at all.

The proposal would also benefit those consumers seeking GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. Such loans, including GSE streamlined refinance loans, may not be available to consumers under the baseline.

2. Benefits to Covered Persons

The proposal's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating QM loans priced 2.25 percentage points or higher above APOR, particularly Under-43-Percent-DTI conventional loans and GSE-eligible loans. For the estimated 33,000 additional conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal, the Bureau estimates an average loan size of $190,000 and thus a total loan volume of $6.3 billion. Under the baseline, after July 1, 2021, creditors would be unable to originate such loans under the General QM loan definition that was in effect prior to March 1, 2021 or the Temporary GSE QM loan definition and would instead have to originate such loans as FHA, Small Creditor QM, or non-QM loans, or originate at a price at or below 2.25 percentage points over APOR as General QM loans. Creditors' current preference for originating QM loans priced 2.25 percentage points or more over APOR likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the proposal conveys benefits to mortgage creditors originating General QM and Temporary GSE QM loans on each of these dimensions.

Given creditors' preference for originating QM loans, the proposal may allow lenders to avoid price reductions on some loans that would be necessary to satisfy the revised General QM loan definition under the baseline. This would increase revenue for creditors on such loans originated during the July 1, 2021 to October 1, 2022 period.

3. Costs to Consumers

For the duration of the July 1, 2021 to October 1, 2022 period, creditors who would have reduced prices on some loans to satisfy the revised General QM loan definition under the baseline may delay reducing loan prices under the proposal. This is likely to occur for some uncertain fraction of the estimated 33,000 additional conventional loans within the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition. Consumers obtaining such loans would pay higher prices for these conventional QM loans relative to the baseline.

In addition, consumers who would have obtained non-QM loans under the baseline but instead obtain QM loans under the proposal forgo the benefit of retaining the ATR causes of action and defenses against foreclosure.

4. Costs to Covered Persons

The proposal would involve minimal costs to covered persons. The most sizable potential costs to covered persons are effectively transfers between creditors for the duration of the mandatory compliance date delay, reflecting temporarily reduced loan origination volume for creditors who primarily originate FHA or Under-43-Percent-DTI non-QM loans and temporarily increased origination volume for lenders who primarily originate Under-43-Percent-DTI conventional loans priced 2.25 percentage points or more over APOR.

5. Other Benefits and Costs

In delaying the expiration of the General QM loan definition that was in effect prior to March 1, 2021, and the Temporary GSE QM loan definition, the proposal would delay any effects of the expiration on the development of the secondary market for private (non-GSE) mortgage loan securities. When the Temporary GSE QM loan definition expires, those loans that do not fit within the revised General QM loan definition represent a potential new market for private securitizations. Thus, the proposal would slightly reduce the scope of the potential non-QM market for the duration of the mandatory compliance date delay, likely lowering profits and revenues for participants in the private secondary market. This would effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

*E. Potential Specific Impacts of the Proposed Rule*

1. Potential Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The proposal's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with $10 billion or less in total assets is similar to the expected impact on larger creditors and non-depository creditors. Those smaller creditors originating portfolio loans can originate Small Creditor QM loans priced 2.25

Option since the inception of the program. *See* FHFA Foreclosure Prevention and Refinance Report (Q3 2020), *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/3Q2020FPR.pdf.*

[98] This estimate assumes that the GSEs continue to originate loans priced 2.25 percentage points or higher above APOR between July 1, 2021 and October 1, 2022. If the GSEs do not originate loans above the General QM Final Rule's pricing thresholds during this period, the Bureau estimates that approximately 28,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal.

percentage points or higher above APOR, and thus may rely less on the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition for originating such loans. If the General QM mandatory compliance date would confer a competitive advantage to these small creditors in their origination of loans priced 2.25 percentage points or higher above APOR, the proposal would delay this outcome.

2. Potential Impact of the Proposed Provisions on Consumers in Rural Areas

The proposal's expected impact on consumers in rural areas is similar or slightly larger than the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans reflect a slightly larger share of the conventional loan market in rural areas (0.8 percent) relative to non-rural areas (0.6 percent).[99]

## VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),[100] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[101] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[102]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[103] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[104]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, on July 1, 2021, the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire, and therefore no creditor—including small entities—would be able to originate QM loans under either definition after that date. Under the proposal, small entities that would otherwise not be able to originate QM loans under these definitions would be able to originate such loans with QM status until October 1, 2022. Thus, the Bureau anticipates that the proposal would only reduce burden on small entities relative to the baseline.

Accordingly, the Acting Director certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

## VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[105] Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170–0015 is the Bureau's OMB control number for Regulation Z. The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number 3170–0015.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

## List of Subjects

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

## Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

## PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In supplement I to part 1026:
■ a. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* revise introductory paragraph 2;
■ b. Under section *43(e)(2) Qualified mortgage defined—general,* add paragraph 1; and
■ c. Revise section *43(e)(4) Qualified mortgage defined—other agencies.*

The revisions and addition read as follows:

### Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

2. *General QM Amendments Effective on March 1, 2021.* The Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after October 1, 2022 (mandatory compliance date). For a given transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other

[99] These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines.

[100] 5 U.S.C. 601 *et seq.*

[101] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[102] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[103] 5 U.S.C. 603 through 605.

[104] 5 U.S.C. 609.

[105] 44 U.S.C. 3501 *et seq.*

than the 2021 General QM Amendments. For transactions subject to § 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with § 1026.2(a)(3)(ii). For transactions that are not subject to § 1026.19(e), (f), or (g), creditors can determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with either § 1026.2(a)(3)(i) or (ii).

* * * * *

*43(e)(2) Qualified Mortgage Defined—General*

1. *General QM Amendments Effective on March 1, 2021.* Comment 43–2 provides that, for a transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments). Prior to the effective date of the 2021 General QM Amendments, § 1026.43(e)(2) provided a qualified mortgage definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation not exceed 43 percent. The 2021 General QM Amendments removed that requirement and replaced it with the annual percentage rate thresholds in § 1026.43(e)(2)(vi), among other revisions. Both the qualified mortgage definition in § 1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the qualified mortgage definition in § 1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. *See* comment 43–2 for an explanation of how creditors determine the date the creditor received the consumer's application for purposes of that comment.

* * * * *

*43(e)(4) Qualified Mortgage Defined—Other Agencies*

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section.

2. *Mortgages for which the creditor received the consumer's application prior to October 1, 2022.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) thorough (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of October 1, 2022 continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after October 1, 2022.

3. *Mortgages for which the creditor received the consumer's application on or after March 1, 2021 and prior to October 1, 2022.* For a discussion of the optional early compliance period for the 2021 General QM Amendments, please see comment 43–2.

4. [Reserved].

5. [Reserved].

* * * * *

Dated: March 2, 2021.

**David Uejio,**

*Acting Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2021–04698 Filed 3–3–21; 4:15 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2020–1182; Product Identifier 2018–SW–036–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2016–08–20 for certain Airbus Helicopters (previously Eurocopter France) EC130B4 and EC130T2 helicopters. AD 2016–08–20 requires repetitively inspecting the tail boom to Fenestron junction frame (junction frame) for a crack. Since the FAA issued AD 2016–08–20, additional cracks have been reported and a design change that modifies the junction frame has become available. This proposed AD would continue to require inspecting the junction frame with the horizontal stabilizer removed, and would propose to expand the applicability, revise the compliance time and the inspection procedures for inspecting the junction frame, add inspection procedures for certain helicopters, allow repair of the junction frame, and would require modifying and then repetitively inspecting the junction frame and reporting certain information. The actions of this proposed AD are intended to address an unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by April 5, 2021.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://*

*www.regulations.gov* by searching for and locating Docket No. FAA–2020–1182; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Kristi Bradley, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2020–1182; Product Identifier 2018–SW–036–AD at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposal.

## Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristi Bradley, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Discussion

The FAA issued AD 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016) (2016–08–20), for Airbus Helicopters Model EC130B4 and EC130T2 helicopters with a junction frame that has 690 or more hours time-in-service (TIS) installed. AD 2016–08–20 requires dye penetrant and borescope inspecting around the circumference of the junction frame for a crack and replacing any cracked junction frame. AD 2016–08–20 was prompted by EASA AD 2015–0033–E, dated February 24, 2015 (EASA AD 2015–0033–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to supersede an existing EASA AD. EASA had determined that it was necessary to define an inspection interval in sling cycles in addition to the existing flight hour inspection interval. EASA also acknowledged an alternative method to inspect from the outside of the tail boom.

## Actions Since AD 2016–08–20 Was Issued

Since the FAA issued AD 2016–08–20, EASA has issued a series of ADs, the most recent being EASA AD 2018–0104, dated May 4, 2018 (EASA AD 2018–0104), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France) Model EC 130 B4 and EC 130 T2 helicopters, all serial numbers, except those with Airbus modification (MOD) 074775 installed. EASA's initial AD was prompted by two incidents of crack propagation through the junction frame that initiated in the lower right-hand side between the web and the flange where the lower spar of the tail boom is joined. EASA states the cracks were of a significant length and not visible from the outside of the helicopter. EASA advised that this condition, if not detected, could lead to structural failure, possibly resulting in Fenestron detachment and consequent loss of control of the helicopter.

Following EASA AD 2015–0033–E, EASA revised its AD to EASA AD 2015–0033R1, dated May 3, 2016 (EASA AD 2015–0033R1), which was prompted by the determination that it was not necessary to inspect junction frames that had accumulated less than 1,200 flight hours. Accordingly, EASA AD 2015–0033R1 extended the inspection threshold from 700 flight hours to 1,200 flight hours. Thereafter, EASA issued EASA AD 2016–0240, dated December 2, 2016 (EASA AD 2016–0240) to supersede EASA AD 2015–0033R1. EASA AD 2016–0240 was prompted by a third incident of cracking in the same area of the junction frame as the first two incidents. Investigation determined that detection of the crack was delayed because of insufficient cleaning of the inspection area inside the junction frame. For that reason, EASA AD 2016–0240 retained the requirements of EASA AD 2015–0033R1 and added additional cleaning requirements before inspecting. After EASA AD 2016–0240 was issued, a fourth incident of cracking in the same area of the junction frame as the first three incidents was reported. This fourth incident prompted EASA to issue EASA AD 2017–0066–E, dated April 21, 2017 (EASA AD 2017–0066–E) to supersede EASA AD 2016–0240. This fourth incident occurred on a junction frame that had accumulated significantly less flight hours than the first three incidents. In light of this, EASA AD 2017–0066–E retained the requirements of EASA AD 2016–0240 and reduced the inspection threshold. Shortly after, EASA issued EASA AD 2017–0080, dated May 5, 2017 (EASA AD 2017–0080) to supersede EASA AD 2017–0066–E. EASA AD 2017–0080 was prompted by the determination that improved procedures to remove the horizontal stabilizer before cleaning and inspecting were necessary for certain helicopters. Accordingly, EASA AD 2017–0080 retained the requirements of EASA AD 2017–0066–E and added the improved procedures. Since EASA issued EASA AD 2017–0080, Airbus Helicopters developed MOD 074775, which consists of the installation of four carbon patches at the junction frame. Installation of MOD 074775, either in production or by retrofit, constitutes terminating action for the repetitive

inspections. Based on the latest information, EASA determined that continued inspections may not adequately address the long-term risk and requires modifying the affected helicopters, which also terminates the repetitive inspections of the pre-modified configuration. Accordingly, EASA issued EASA AD 2018–0104 to supersede EASA AD 2017–0080 to require installation of MOD 074775.

Also since the FAA issued AD 2016–08–20, it has been determined that the dye penetrant inspections required by AD 2016–08–20 are unnecessary because visual inspections are adequate to inspect for cracks in the affected area instead.

As a result of the EASA-issued ADs and the further incidents of cracked junction frames, this proposed AD proposes to expand the applicability to include all Airbus Helicopters Model EC130B4 and EC130T2 helicopters with a junction frame, regardless of how many hours TIS have accumulated on the junction frame; revise the compliance time to inspect the junction frame with the horizontal stabilizer removed to depend on the hours TIS accumulated on the junction frame; change the inspection of the junction frame with the horizontal stabilizer removed from the dye-penetrant inspection required by AD 2016–08–20 to a visual inspection; add inspection procedures for helicopters with a skin cut-out at the junction frame; allow repairing a junction frame in accordance with an FAA approved repair procedure; require the installation of MOD 074775 or the four carbon patches reinforcements; and require repetitive inspections of a modified junction frame.

**FAA's Determination**

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all of the information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

**Related Service Information Under 1 CFR Part 51**

Airbus Helicopters has issued Emergency Alert Service Bulletin No. 05A017, Revision 7, dated March 21, 2018, for Model EC130 B4 and T2 helicopters without MOD 074775 installed. This service information specifies procedures for cleaning inside the junction frame, inspecting the junction frame from the inside of the tail boom with the horizontal stabilizer both removed and installed for a crack, and inspecting the junction frame from the outside of the tail boom for a crack.

Airbus Helicopters has issued Service Bulletin No. EC130–53–036, Revision 4, dated April, 28, 2020, for Model EC130 B4 and T2 helicopters without MOD 074609 or 074775 installed and on which the skin of the junction frame area has not been repaired. This service information specifies procedures to reinforce the junction frame (MOD 074775) by replacing the two lateral splices which join the skins with four carbon patches (left-hand side, right-hand side, and lower sides).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Other Related Service Information**

Airbus Helicopters has issued Service Bulletin No. EC130–53–029, Revision 1, dated January 27, 2016. This service information specifies procedures to make a cut-out of the splice and skin at the junction frame (MOD 350A087421).

Airbus has issued EC 130 B4 Chapter 4, Airworthiness Limitations Section, Revision 11, dated January 19, 2019 and EC 130 T2 Chapter 4, Airworthiness Limitations Section, Revision 9, dated September 9, 2019, which specify visually checking the junction frame for cracks at an interval of 600 flight hours with a margin of 60 flight hours.

Airbus Helicopters has also issued Section 55–11–00, 6–4—Horizontal Stabilizer—Inspection/Check, of Aircraft Maintenance Manual EC130, dated November 9, 2017, which specifies procedures for cleaning inside the junction frame and inspecting the junction frame from the inside of the tail boom with the horizontal stabilizer removed.

**Proposed AD Requirements**

This proposed AD would require:

- For helicopters without MOD 074775, or MOD AH 350A087421 or SB EC130–53–029 installed, at a compliance time based on the hours TIS accumulated on the junction frame, removing the horizontal stabilizer, cleaning the junction frame, and visually inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
  - ○ Following the initial visual inspection, within 25 hours TIS or 390 sling cycles, whichever comes first, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever comes first, either repeating the initial visual inspection, or, if the surface area is clean, borescope inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
  - ○ Also following the initial visual inspection, within 150 hours TIS and thereafter at intervals not to exceed 150 hours TIS, repeating the initial visual inspection.
- For helicopters without MOD 074775 installed, but with MOD AH 350A087421 or SB EC130–53–029 installed, before the junction frame accumulates 350 hours TIS or within 10 hours TIS, whichever occurs later, visually inspecting for a crack on the junction frame area in each skin cut-out area.
  - ○ Following the initial visual inspection, within 10 hours TIS or 250 sling cycles, whichever occurs first, and thereafter at intervals not exceeding 10 hours TIS or 250 sling cycles, whichever occurs first, repeating the initial visual inspection.
  - ○ Also following the initial visual inspection, within 660 hours TIS and thereafter at intervals not to exceed 660 hours TIS, removing the horizontal stabilizer, cleaning the junction frame, and dye-penetrant inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
- If there is a crack, replacing or repairing the junction frame in accordance with an FAA approved repair procedure before further flight. Repairing the junction frame would not constitute terminating action for the requirements of this proposed AD.
- For helicopters without MOD 074775 installed, with or without MOD AH 350A087421 or SB EC130–53–029 installed, without MOD 074609 or SB 53–024 installed, and on which the skin of the junction frame area has never been repaired, installing MOD 074775 within 24 months as of the effective date of this AD and reporting certain information to Airbus Helicopters within 30 days after installing MOD 074775.
- For helicopters without MOD 074775 installed, with MOD 074609 or SB 53–024 installed, or on which the skin of the junction frame area has been previously repaired at any time, reinforcing the junction frame by replacing the two lateral splices which join the skins with four carbon patches (left-hand side, right-hand side, and lower sides) within 24 months as of the effective date of this AD.
- For helicopters with MOD 074775 installed or with the four carbon patches reinforcements installed, but without

MOD 074581 for Model EC130T2 helicopters, within 600 hours TIS after the installation of MOD 074775 or the reinforcement, and thereafter at intervals not exceeding 600 hours TIS, visually inspect the junction frame area for a crack. If there is a crack, replacing or repairing the junction frame in accordance with an FAA approved repair procedure before further flight. Repairing the junction frame would not constitute terminating action for the requirements of this proposed AD.

**Differences Between This Proposed AD and the EASA AD**

EASA AD 2018–0104 does not apply to helicopters with MOD 074775, whereas this proposed AD does. EASA AD 2018–0104 requires performing a local non-destructive inspection if in doubt about if there is a crack, whereas this proposed AD does not. EASA AD 2018–0104 allows the pilot to visually inspect the junction frame from outside the tail boom for a crack, whereas this proposed AD does not. EASA AD 2018–0104 requires contacting Airbus Helicopters if any crack is detected, whereas this proposed AD would require replacing or repairing the junction frame in accordance with an FAA approved repair procedure instead. This proposed AD would require a repetitive inspection for helicopters with MOD 074775 installed, whereas the EASA AD does not.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 263 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hours. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Cleaning and inspecting the junction frame area with the horizontal stabilizer removed would take about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet, per inspection cycle.

Internally borescope inspecting the junction frame area with the horizontal stabilizer installed would take about 0.5 work hour for an estimated cost of $43 per helicopter and $11,309 for the U.S. fleet, per inspection cycle.

If applicable, cleaning and inspecting the junction frame area in each skin cut-out area would take about 1.25 work-hour for an estimated cost of $106 per helicopter and $27,878 for the U.S. fleet, per inspection cycle.

Modifying the junction frame skin reinforcements would take about 90 work-hours and parts cost about $10,000 for an estimated cost of $17,650 per helicopter and $4,641,950 for the U.S. fleet. Reporting certain information would take about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet. Inspecting the modified junction frame area would take about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet, per inspection cycle.

If required, repairing or replacing the junction frame would take up to 50 work-hours and parts would cost about $60,000 for an estimated cost of $64,250 per helicopter.

According to Airbus Helicopters' service information, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Airbus Helicopters. Accordingly, the FAA has included all costs in this cost estimate.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Will not affect intrastate aviation in Alaska, and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016); and

■ b. Adding the following new AD:

**Airbus Helicopters:** Docket No. FAA–2020–1182; Product Identifier 2018–SW–036–AD.

**(a) Applicability**

This airworthiness directive (AD) applies to Airbus Helicopters Model EC130B4 and EC130T2 helicopters, certificated in any category, with a tail boom to Fenestron junction frame (junction frame).

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in the junction frame. This condition could result in failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

**(c) Affected ADs**

This AD supersedes AD 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016).

**(d) Comments Due Date**

The FAA must receive comments by April 5, 2021.

**(e) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(f) Required Actions**

(1) For helicopters without modification (MOD) 074775, or MOD AH 350A087421 or SB EC130–53–029 installed, at the compliance time specified by the hours time-in-service (TIS) accumulated on the junction frame in Figure 1 to this paragraph, do the following:

Figure 1 to Paragraph (f)(1)

| Junction Frame Accumulated Hours TIS | Compliance Time |
|---|---|
| Less than 325 hours TIS | Before accumulating 350 hours TIS, or within 25 hours, whichever occurs later. |
| 325 or more hours TIS, but less than 675 hours TIS | Within 25 hours TIS. |
| 675 or more hours TIS | Before accumulating 700 hours TIS, or within 10 hours TIS, whichever occurs later. |

(i) Remove the horizontal stabilizer; using a clean, lint-free, white cloth soaked with liquid Methyl Ethyl Ketone (MEK), clean the inside of the junction frame (a) as shown in Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 7, dated March 21, 2018 (EASB 05A017, Rev 7); and visually inspect for cracking around the circumference of the junction frame, in the web of the junction frame (a) and in the radius between the web and the flange of the tail boom side as shown in Figure 1 EASB 05A017, Rev 7. Pay particular attention to the area around the 4 spars (b) as shown in Figure 1 of EASB 05A017, Rev 7. Examples of cracks are shown in Figure 3 of EASB 05A017, Rev 7. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(ii) Thereafter following paragraph (f)(1)(i) of this AD, within 25 hours TIS or 390 sling cycles for helicopters that perform external load carrying operations, whichever occurs first, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever occurs first, either perform the actions of paragraph (f)(1)(i) of this AD or, if the surface of the junction frame area is clean, use a borescope through the horizontal stabilizer opening to borescope inspect for a crack around the circumference of the junction frame, and in the web of the junction frame (a) and in the radius between the web and the flange on the tail boom side as shown in Figure 2 EASB 05A017, Rev 7. Pay particular attention to the area around the 4 spars (b) of Figure 2 of EASB 05A017, Rev 7. Examples of cracks are shown in Figure 3 of EASB 05A017, Rev 7. For purposes of this AD, a sling cycle is defined as one landing with or without stopping the rotor or one external load-carrying operation; an external load-carrying operation occurs each time a helicopter picks up an external load and drops it off. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(iii) Thereafter following paragraph (f)(1)(i) of this AD, within 150 hours TIS and thereafter at intervals not to exceed 150 hours TIS, accomplish the actions required by paragraph (f)(1)(i) of this AD. Accomplishment of this paragraph constitutes compliance for an instance of paragraph (f)(1)(ii) of this AD.

(2) For helicopters without MOD 074775 installed, but with MOD AH 350A087421 or SB EC130–53–029 installed, before the junction frame accumulates 350 hours TIS or within 10 hours TIS, whichever occurs later:

(i) Visually inspect for cracking on the junction frame (a) in the upper and lower right-hand side and upper and lower left-hand side areas of the skin cut-out as shown in Detail A, Figure 4 of EASB 05A017, Rev 7. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(ii) Thereafter following paragraph (f)(2)(i) of this AD, within 10 hours TIS or 250 sling cycles for helicopters that perform external load carrying operations, whichever occurs first, and thereafter at intervals not exceeding 10 hours TIS or 250 sling cycles, whichever occurs first, accomplish the actions required by paragraph (f)(2)(i) of this AD.

(iii) Thereafter following paragraph (f)(2)(i) of this AD, within 660 hours TIS and thereafter at intervals not to exceed 660 hours TIS, accomplish the actions required by paragraph (f)(1)(i) of this AD. Accomplishment of this paragraph constitutes compliance for an instance of paragraph (f)(2)(ii) of this AD.

(3) For helicopters without MOD 074775 installed, with or without MOD AH 350A087421 or SB EC130–53–029 installed, without MOD 074609 or SB 53–024 installed, and on which the skin of the junction frame area has never been repaired, within 24 months as of the effective date of this AD, install MOD 074775 by following the Accomplishment Instructions, paragraphs 3.B.2.a. through g., of Airbus Helicopters Service Bulletin No. EC130–53–036, Revision 4, dated April, 28, 2020 (ASB EC130–53–036, Rev 4), except where ASB EC130–53–036, Rev. 4 specifies to certain discard parts, you are required to remove those parts from service instead and where ASB EC130–53–036, Rev 4. specifies contacting Airbus Helicopters for corrective action, the corrective action must be accomplished using a method approved by the FAA. Where ASB EC130–53–036, Rev 4, specifies completing the table in Appendix 4.H. under paragraph 3.B.2.g., complete and return the table to Airbus Helicopters within 30 days after installing MOD 074775. Installation of MOD 074775 constitutes terminating action for the inspections required by paragraphs (f)(1) and (2) of this AD.

(4) For helicopters without MOD 074775 installed, with MOD 074609 or SB 53–024 installed, or on which the skin of the junction frame area has been previously repaired at any time, within 24 months as of the effective date of this AD, reinforce the junction frame by replacing the two lateral splices which join the skins with four carbon patches (left-hand side, right-hand side, and lower sides) in accordance with an FAA approved corrective procedure. Installation

of this reinforcement constitutes terminating action for the inspections required by paragraphs (f)(1) and (2) of this AD.

(5) For Model EC130B4 helicopters with MOD 074775 installed or with the reinforcement that is required by paragraph (f)(4) of this AD; and for Model EC130T2 helicopters with MOD 074775 installed or with the reinforcement that is required by paragraph (f)(4) of this AD, but without MOD 074581 installed:

(i) Within 600 hours TIS after the installation of MOD 074775 or the reinforcement that is required by paragraph (f)(4) of this AD, and thereafter at intervals not exceeding 600 hours TIS, perform the actions of paragraph (f)(1)(i) of this AD.

(ii) If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing the junction frame does not constitute terminating action for the requirements of this AD.

**(g) Special Flight Permits**

Special flight permits are prohibited.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

**(i) Additional Information**

(1) Airbus Helicopters Service Bulletin No. EC130–53–029, Revision 1, dated January 27, 2016, Airbus EC 130 B4 Chapter 4, Airworthiness Limitations Section, Revision 11, dated January 19, 2019, Airbus EC 130 T2 Chapter 4, Airworthiness Limitations Section, Revision 9, dated September 9, 2019, and Section 55–11–00, 6–4–Horizontal Stabilizer—Inspection/Check, of Aircraft Maintenance Manual EC130, dated November 9, 2017, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) 2018–0104, dated May 4, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–1182.

**(j) Subject**

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft Tail Boom.

Issued on February 19, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–03954 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–1183; Project Identifier 2019–SW–008–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, as identified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD. This proposed AD was prompted by a report of an in-flight loss of engine and main gearbox (MGB) cowlings. This proposed AD would require inspecting the MGB fixed cowling front fitting (MGB front fitting), and depending on findings, corrective action. This proposed AD would also require a new modification, which would constitute a terminating action for the inspection. These proposed AD requirements are as specified in an EASA AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by April 19, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1183.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1183; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Blaine Williams, Aerospace Engineer, Los Angles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, California 90712; telephone 562–627–5371; email *blaine.williams@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2020–1183; Project Identifier 2019–SW–008–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposal.

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Blaine Williams, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, California 90712; telephone 562–627–5371; email *blaine.williams@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Discussion**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0008, dated January 22, 2019 (EASA AD 2019–0008), to correct an unsafe condition for certain Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Model EC 155 B, EC 155 B1, SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters.

This proposed AD was prompted by reports of an in-flight loss of engine and MGB cowlings. Subsequent investigations revealed that the MGB cowling attachment fittings failed because of mounting stress in the MGB front fitting and air intake bulkhead. The FAA is proposing this AD to address failure of the MGB front fitting and subsequent detachment of the MGB or engine cowlings. See EASA AD 2019–0008 for additional background information.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2019–0008 requires inspecting the MGB front fittings within 110 flight hours after April 14, 2017 (the effective date of EASA AD 2017–0055, dated March 31, 2017). If there is a discrepancy, the EASA AD requires applicable corrective action(s) before next flight. EASA AD 2019–0008 also requires modification of the MGB fixed cowling attachments within 660 flight hours or 23 months, whichever occurs first, after the effective date described in EASA AD 2019–0008. Accomplishing the modification constitutes a terminating action for the required inspection.

The FAA also reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–53.00.62 and EC155–53A038, each Revision 0 and dated December 20, 2018 (ASB AS365–53.00.62 and ASB EC155–53A038). ASB AS365–53.00.62 applies to Model AS365-series helicopters. ASB EC155–53A038 applies to Model EC155-series helicopters. This service information specifies replacing the front bracket, inspecting for stress of the MGB fixed cowlings on the radiator bulkhead, and installing an additional locking system.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination and Requirements of This Proposed AD**

These products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the EASA AD referenced above. The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0008, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0008 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0008 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0008 that is required for compliance with EASA AD 2019–0008 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1183 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 19 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Inspecting the MGB front fittings would take about 2 work-hours for an estimated cost of $170 per helicopter and $3,230 for the U.S. fleet. If required, replacing an MGB front fitting would take about 2 work-hours and parts would cost about $590 for an estimated total cost of $760 per fitting. Other repairs could take up to 8 work-hours (excluding drying time) and parts would cost a minimal amount for an estimated cost of up to $680 per helicopter.

Modifying the MGB fixed cowling attachments would take about 5 work-hours and parts would cost about $630 for an estimated cost of $1,055 per helicopter and $20,045 for the U.S. fleet.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Airbus Helicopters:** Docket No. FAA–2020–1183; Project Identifier 2019–SW–008–AD.

**(a) Comments Due Date**

The FAA must receive comments by April 19, 2021.

**(b) Affected Airworthiness Directives (ADs)**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0008, dated January 22, 2019 (EASA AD 2019–0008).

**(d) Subject**

Joint Aircraft System Component (JASC) Code: 7110, Engine Cowling System.

**(e) Reason**

This AD was prompted by a report of an in-flight loss of main gearbox (MGB) and engine cowlings. The FAA is issuing this AD to address a failure of the MGB fixed cowling front fitting, and subsequent MGB cowling or engine cowling detachment, which could result in damage to the helicopter, loss of helicopter control, and possible injury to persons on the ground.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0008.

**(h) Exceptions to EASA AD 2019–0008**

(1) Where EASA AD 2019–0008 refers to April 14, 2017 (the effective date of EASA AD 2017–0055, dated March 31, 2017), this AD requires using the effective date of this AD.

(2) Where EASA AD 2019–0008 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2019–0008 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where EASA AD 2019–0008 requires the modification within 660 flight hours or 23 months, whichever occurs first, this AD requires the modification within 660 hours time-in-service instead.

(5) Although the service information referenced in EASA AD 2019–0008 specifies to discard certain parts, this AD requires removing those parts from service instead.

(6) Where the service information referenced in EASA AD 2019–0008 specifies to use tooling, equivalent tooling may be used.

(7) The ''Remarks'' section of EASA AD 2019–0008 does not apply to this AD.

(8) Where paragraph (1) states to, ''inspect the MGB fixed cowling front fittings in accordance with the instructions of paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB,'' this AD requires determining if Airbus Helicopters Alert Service Bulletin No. 53.00.55, Revision 0, dated March 13, 2017, or Revision 1, dated December 20, 2018, has or has not been complied with and following the instructions, ''For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has not been complied with'' or ''For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has been complied with,'' as applicable, in paragraph 1.E.2, of Airbus Helicopters Alert Service Bulletin No. AS365–53.00.62 or EC155–53A038, each Revision 0 and dated December 20, 2018 (ASB AS365–53.00.62 or ASB EC155–53A038), as applicable to your model helicopter.

(9) Where paragraph (2) of EASA AD 2019–0008 states to, ''accomplish the applicable corrective action(s) in accordance with paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB,'' this AD requires accomplishing the applicable corrective actions by following ASB AS365–53.00.62 or ASB EC155–53A038, as applicable to your model helicopter.

(10) Where paragraph 3.B.2.e.3 of the applicable modification ASB referenced in EASA AD 2019–0008 refers to paragraph 3.B.e.3, this AD requires referring to paragraph 3.B.3 of ASB AS365–53.00.62 or ASB EC155–53A038, as applicable to your model helicopter.

**(i) Special Flight Permit**

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

**(j) Alternative Methods of Compliance (AMOCs)**

The Manager, Strategic Policy Rotorcraft Section, FAA, may approve AMOCs for this AD. Send your proposal to: Manager, Strategic Policy Rotorcraft Section, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

**(k) Related Information**

(1) For EASA AD 2019–0008 contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1183.

(2) For more information about this AD, contact Blaine Williams, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, California 90712; telephone

562–627–5227; email *blaine.williams@faa.gov.*

Issued on January 25, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–03689 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2021–0042; Airspace Docket No. 20–AEA–13]**

**RIN 2120–AA66**

## Proposed Amendment VOR Federal Airway V–487; Eastern New York and Northern Vermont

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend VOR Federal airway V–487 in the vicinity of Glens Falls, NY, and Burlington, VT. The proposed change would substitute a radial from the Burlington, VT, VOR/DME (BTV), in place of the current Glens Falls, NY, VOR/DME (GFL) radial, for defining a navigation fix along the route. Additionally, this action would remove segments of V–487 between Burlington, VT, and St Jean, Canada. These changes are necessary due to the decommissioning of the Glens Falls, NY, VOR/DME, and the decommissioning of the St Jean, Canada VOR/DME (YJN).

**DATES:** Comments must be received on or before April 19, 2021.

**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; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0042; Airspace Docket No. 20–AEA–13 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the VOR Federal airway V–487 to match changes in navigation aid infrastructure.

### 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 (FAA Docket No. FAA–2021–0042; Airspace Docket No. 20–AEA–13 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0042; Airspace Docket No. 20–AEA–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airway V–487 in the vicinity of Glens Falls, NY, and Burlington, VT. The proposed change would substitute a radial from the Burlington, VT, VOR/DME, in place of the current Glens Falls, NY, VOR/DME radial, for defining the ENSON, VT, navigation fix. Currently, the ENSON, VT, navigation fix is defined by the intersection of the Cambridge, NY, VOR/DME (CAM) 002°

radial, and the Glens Falls, NY, VOR/DME 032° radial.

This change is necessary because the Glens Falls VOR/DME has been decommissioned and is no longer in service. As amended, the ENSON fix would be defined by the intersection of the Burlington, VT, 187° (T)/202° (M), and the Cambridge, NY 002° radials. This change would not affect navigation along that portion of the route.

Additionally, the FAA proposes to remove the segment of V–487 that extends between the Burlington, VT, VOR/DME, and the St Jean, Canada VOR/DME due to the decommissioning of the St Jean VOR/DME. As amended, V–487 would extend between LaGuardia, NY, and Burlington, VT.

*Note:* when new radials are specified in a proposed airway route description, both True and Magnetic degrees are stated in the NPRM. Otherwise, only True degrees are included in the description.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E, dated July, 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

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 Department of Transportation (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 proposed 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.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''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(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways*

* * * * *

**V–487 [Amended]**

From LaGuardia, NY; Bridgeport, CT; INT Bridgeport 343° and Cambridge, NY, 189° radials; Cambridge; INT Burlington, VT, 187°T/202°M and Cambridge 002° radials; Burlington.

* * * * *

Issued in Washington, DC, on February 22, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–03969 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2021–0062; Airspace Docket No. 20–ASO–21]**

**RIN 2120–AA66**

## Proposed Amendment of Area Navigation (RNAV) Route T–207; in the Vicinity of Cecil, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend low altitude RNAV route T–207 in Florida. The proposed change would remove the Cecil, FL (VQQ), VOR from the route description due to the planned decommissioning of that VOR. The removal would not affect navigation along the route.

**DATES:** Comments must be received on or before April 19, 2021.

**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; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0062; Airspace Docket No. 20–ASO–21 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in the southeastern United States to improve

the efficiency of the National Airspace System by lessening the dependency on ground-based navigation aids.

**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 (FAA Docket No. FAA–2021–0062; Airspace Docket No. 20–ASO–21 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0062; Airspace Docket No. 20–ASO–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 to amend low altitude RNAV route T–207 by removing the Cecil, FL (VQQ), VOR from the route description. This action is necessary due to the planned decommissioning of the Cecil VOR. T–207 currently extends between the Ormond Beach, FL (OMN), VORTAC, and the Waycross, GA (AYS), VORTAC. The Cecil VOR is located along a straight segment of the route between the CARRA, FL, Fix, and the MONIA, FL, Fix. The VOR is not a required component for navigating on T–207. Removal of the Cecil VOR would not affect the alignment or navigation along T–207.

In addition, all latitude/longitude coordinates in the route description would be updated to the hundredths of a second place for greater navigation accuracy.

United States Area Navigation routes are published in paragraph 6011 of FAA Order 7400.11E, dated July, 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be subsequently published in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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 Department of Transportation (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 proposed 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.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''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(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6011 United States Area Navigation Routes*

* * * * *

**T–207 Ormond Beach, (OMN) to Waycross, GA (AYS) [Amended]**

| | | |
|---|---|---|
| Ormond Beach, FL (OMN) | VORTAC | (Lat. 29°18′11.71″ N, long. 81°06′45.71″ W) |
| CARRA, FL | Fix | (Lat. 29°43′50.91″ N, long. 81°36′29.10″ W) |
| MONIA, FL | Fix | (Lat. 30°28′49.00″ N, long. 82°02′53.44″ W) |
| Waycross, GA (AYS) | VORTAC | (Lat. 31°16′09.93″ N, long. 82°33′23.20″ W) |

* * * * *

Issued in Washington, DC, on February 22, 202.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–03970 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2020–0490; Airspace Docket No. 18–AWA–2]**

**RIN 2120–AA66**

## Proposed Amendment of Class B Airspace; Miami, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify the Miami International Airport, FL (MIA) Class B airspace area to ensure the containment of aircraft conducting instrument procedures. The FAA is proposing this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the MIA terminal area. This action also proposes changes to the MIA Class B airspace area to ensure the containment of arriving and departing aircraft within Class B airspace as required by FAA directives contained in FAA Order 7400.2M. This proposed action is separate and distinct from the Florida Metroplex Project.

**DATES:** Comments must be received on or before May 4, 2021.

**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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0490 and Airspace Docket No. 18–AWA–2 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

### 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 (FAA Docket No. FAA–2020–0490 and Airspace Docket No. 18–AWA–2) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0490 and Airspace Docket No. 18–AWA–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### Background

In 1973, the FAA issued a final rule that established the Miami, FL, Terminal Control Area (TCA) (38 FR 3588, February 8, 1973). As a result of the Airspace Reclassification final rule, which became effective in 1993, the term ''Terminal Control Area'' was replaced by ''Class B airspace area.'' (56 FR 65638, December 17, 1991). As with

the former TCA, the primary purpose of a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high-density air traffic operations by providing an area in which all aircraft are subject to the same operating rules and equipment requirements.

In 1975, the FAA issued a final rule modifying the Miami, FL TCA (40 FR 4119, January 28, 1975). Based on changes in approach procedures, and a re-evaluation of the airspace needed to contain large turbine-powered aircraft, the FAA implemented numerous changes to the Miami, FL TCA. These included redefining various lateral boundaries and altitude floors of the TCA, and the removal of airspace not needed for the containment of aircraft. The revised configuration is similar to the current MIA Class B airspace area.

In 1983, the FAA issued a final rule that established a new ''Area H'' that raised the floor of the then Miami, FL TCA from 1,500 feet mean sea level (MSL), to 2,000 feet MSL in an area west of Miami-Opa Locka Executive Airport (OPF) (48 FR 5540, February 7, 1983). This change allowed aircraft to fly the Instrument Landing System (ILS) approach to OPF Runway 09L without entering the Miami, FL TCA.

A 1996 final rule corrected the legal description of the MIA Class B airspace area. The final rule was necessary due to the decommissioning of the Biscayne Bay, FL, Very High Frequency Omnidirectional Range (VOR), and the Miami, FL, VOR, navigation aids (NAVAID) that had been used to define the lateral limits of the airspace (61 FR 5934, February 15, 1996). The 1996 final rule simply replaced obsolete NAVAID references in the Class B description but it did not alter the actual vertical or lateral limits of the MIA Class B airspace area.

**Developments Since the Last MIA Class B Airspace Area Modification**

The last substantial change to the MIA Class B airspace area was the 1975 rule. That rule was based on air traffic activity levels from the 1970s. The following developments have taken place since its enactment:

—In 2003, a third parallel runway (08L/26R) was commissioned at MIA, which increased airport capacity by bringing the number of runways to four.

—Over 100 airlines are now serving MIA. MIA operations increased from 278,005 in 2015 to 416,773 in 2019. Passenger enplanements rose from 20,875,813 in 2016 to 21,021,640 in 2018.

—The South Florida area has seen significant growth in general aviation activity.

—Implementation of Area Navigation/Required Navigation Performance (RNAV/RNP) approach procedures at MIA.

—Advances in flight deck technology that allow aircraft automation to manage both the lateral and vertical flight path.

—Air carriers' adoption of ''optimized profile descent'' procedures that provide a constant angle, uninterrupted descent from cruising altitude into the terminal area. The newer generation aircraft utilize a shallower descent at reduced power settings resulting in a more fuel-efficient profile.

—Industry-wide migration to satellite-based global positioning system (GPS) RNAV procedures, and RNP procedures have replaced procedures that rely on ground-based navigational facilities.

—Introduction of several new capabilities at MIA that are expect to boost arrival capacity, including Simultaneous Instrument Approaches to Runway 9/27, Automatic Dependent Surveillance-Broadcast (ADS–B), and Wake Recategorization (RECAT)/Consolidated Wake Turbulence procedural changes.

**Impact of MIA Class B Airspace Area Configuration on Operations**

Despite the continued growth in air traffic operations and passenger enplanements over the years, the FAA has not substantially modified the MIA Class B airspace area since the 1975 rule. The current MIA Class B airspace area configuration and operational demand has the following effects:

—The MIA Class B airspace area does not fully contain aircraft flying instrument procedures at MIA as required by FAA directives contained in FAA Order 7400.2M. Aircraft executing instrument approaches routinely exit and re-enter Class B airspace on final approach.

—Controllers must vector large turbine-powered aircraft beyond the outer limit of Class B airspace during periods of moderate to heavy arrival demand in order to comply with final approach course interception procedures and separation standards.

—If large turbine-powered aircraft are vectored or descended outside the Class B airspace, controllers must advise pilots when leaving and re-entering the airspace. This contributes to increased controller workload as well as radio transmission congestion.

—At times, controllers must keep arrivals above their normal descent profiles in order to contain them within Class B airspace. This negates the benefits of optimized profile descents and is detrimental to newer aircraft types that require longer/shallower descent profiles in order to dissipate energy during the descent.

—Aircraft on downwind leg being vectored to Runway 30 often times exit the Class B airspace during busy arrival and departure times, due to the spacing procedures required when conducting Converging Runway Operations.

—Large turbine-powered aircraft may be placed in areas where non-participating aircraft may be operating.

—When simultaneous approaches to Runways 9 and 8L/R are in progress, the requirement to remain at 5,000 feet MSL requires controllers to have pilots expedite their descent from 5,000 feet MSL to 3,000 feet MSL, which the aircraft landing on Runway 9/27 must reach before turning onto the base leg.

—The limitations imposed by these existing 5,000 foot MSL and 4,000 foot MSL Class B airspace area floors requires controllers to vector aircraft on close-in downwind legs and/or restrict their altitudes to contain them in the Class B, thus increasing the possibility of unstable approaches.

**Proposed Changes to the MIA Class B Airspace Area**

To improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the MIA terminal area, consistent with the directive to contain arriving and departing aircraft within Class B, the FAA is proposing a number of changes to the MIA Class B airspace configuration, including:

—Expanding the existing 20 nautical mile (NM) outer boundary of the MIA Class B airspace area to 25 NM east and west of MIA for containment of aircraft in MIA Class B airspace.

—Lowering the floor of MIA Class B airspace area from the current 5,000 feet MSL to 3,000 feet MSL in the area north of Miami Executive Airport (TMB); and from the current 4,000 feet MSL to 3,000 feet MSL in the area northwest of MIA.

An analysis of existing MIA traffic flow shows that the proposed MIA Class B airspace area modifications would enhance safety by containing instrument procedures within MIA Class B airspace area, and provide better segregation between instrument flight rules (IFR) aircraft arriving and departing MIA, and

visual flight rules (VFR) aircraft operating in the vicinity of the MIA Class B airspace area. The MIA Class B airspace modifications proposed in this NPRM are intended to, in the most safe and efficient manner, expand Class B airspace area, where necessary, to contain large, turbine-powered aircraft while minimizing the impact on the use of the airspace by other aircraft.

**Clarification of Terms**

A review of comments received during the pre-NPRM public input phase revealed that some misunderstanding exists of several terms that apply to published VFR routes. The confusion has arisen because, over time, the terms have often been used interchangeably. Since the terms are used in this NPRM, the FAA is clarifying the meaning of these terms.

A *VFR Corridor* is airspace through a Class B airspace area with defined vertical and lateral boundaries in which a VFR aircraft may operate without an air traffic control (ATC) clearance or communication with ATC. A VFR Corridor is, in effect, a ''tunnel'' or ''hole'' through Class B airspace. Due to heavy traffic volume and the procedures necessary to manage the flow of traffic, it has not been possible to incorporate VFR Corridors in MIA Class B airspace areas.

A *VFR Flyway* is a general flight path, not defined as a specific course, for use by pilots planning flights into, out of, through, or near complex terminal airspace in order to avoid Class B airspace. An ATC clearance is not required to fly these routes. Where established, VFR Flyways are depicted on the reverse side of the VFR Terminal Area Chart (TAC). These routes are designed to assist pilots in planning flights under or around Class B airspace areas without actually entering Class B airspace.

A *Class B Airspace Area VFR Transition Route* is a route depicted on a TAC to accommodate VFR aircraft transiting through a Class B airspace area. The route includes a specific flight course and specific ATC-assigned altitudes. Pilots must obtain an ATC clearance prior to entering Class B airspace on the route.

See the Aeronautical Information Manual (AIM) for more details about these routes.

**Airport Location Identifiers**

For ease of reference, the following airport identifiers are used in this NPRM:

FLL Fort Lauderdale/Hollywood International Airport
FXE Fort Lauderdale Executive Airport
HST Homestead Air Reserve Base
HWO North Perry Airport
MIA Miami International Airport
TMB Miami Executive Airport (formerly Miami, Kendall-Tamiami Executive Airport)
TNT Dade-Collier Training and Transition Airport
X51 Miami Homestead General Aviation Airport

**Pre-NPRM Public Input**

In 2010, the FAA formed an Ad Hoc Committee (Committee) to seek input and recommendations from representatives of affected aviation segments for the FAA to consider in designing proposed modifications to the MIA Class B airspace area. At that time, the FAA was considering a proposal that would expand the MIA Class B airspace area as well as convert the Fort Lauderdale/Hollywood International Airport (FLL) Class C airspace area to a Class B airspace area. Participants in the Committee included representatives from the Aircraft Owners and Pilots Association (AOPA), Miami-Dade Aviation Department, Miami-Dade Police Department Aviation Unit, Florida DOT, Broward County Aviation Department, Opa-Locka Helicopters, ADF Airways, Sheltair Aviation, National Jets, Aerial Banners, Delta Connection, Florida Aero Club, and Van Wagner Aerial Media.

**Discussion of Ad Hoc Committee Recommendations**

On September 1, 2010, the Committee submitted three recommendations for the FAA to consider in designing proposed modifications of the MIA and FLL airspace.

The Committee recommended that the FAA align the boundaries of the MIA Class B airspace with prominent geographical features (visual landmarks) whenever possible.

The FAA agreed with the recommendation and, to the extent possible, adopted the use of geographical features in this proposal. However, areas that overlie the Atlantic Ocean and the Florida Everglades lack prominent landmarks. Currently, there are approximately 25 VFR checkpoints, 4 VFR waypoints, and 5 latitude/longitude points depicted on the VFR Flyway Planning Chart in the MIA/FLL area. The FAA is considering additional points to enhance VFR navigation in the area.

The Committee also recommended that the FAA establish a VFR Corridor between 3,000 feet MSL and 5,000 feet MSL that extends from the northern edge of FLL's airspace to the southern edge of MIA's airspace, to permit north-south transition of aircraft. The Committee suggested that this would be similar to the Los Angeles Special Flight Rules Area which traverses the Los Angeles Class B airspace area.

The FAA could not adopt this recommendation because VFR Corridors do not apply to Class C airspace areas. Separately, with regard to the specific proposed location, a VFR Corridor is not feasible for this area based on operational constraints such as traffic volume and traffic flows. MIA arrival traffic descends from 8,000 feet MSL to 3,000 feet MSL in the downwind leg. Departures climb to 5,000 feet MSL initially, and aircraft executing a go-around climb to either 3,000 feet MSL or 4,000 feet MSL. For FLL, arrivals descend from 6,000 feet MSL to 3,000 feet MSL in the downwind leg. Departures climb to 3,000 feet MSL initially, and aircraft executing a go-around climb to 2,000 feet MSL or 3,000 feet MSL. Since aircraft could operate in the corridor without an ATC clearance or communication with ATC, this would present a safety hazard.

Alternatively, currently there is a charted VFR Flyway below 3,000 feet MSL, running generally north and south, that is located beneath the western side of the MIA Class B airspace area. Additionally, an east-west oriented Flyway below 2,000 feet MSL is located to the south of Hollywood North Perry airport (HWO), and to the north of Miami-Opa Locka Executive airport (OPF).

The Committee recommended that the FAA develop ''shoreline transitions'' for VFR aircraft through the Class B airspace. Specifically, this would accommodate pilots who desire to operate over or near the shoreline east of FLL. The Committee added that the FAA should publish information on Sectional and TAC to advise aircraft requesting shoreline transitions to contact MIA approach; including frequencies, designated entry and exit points, expected altitudes, and times requests may be approved.

The FAA reviewed this recommendation and, although shoreline transitions do exist in the Miami area, the Fort Lauderdale-Hollywood International Airport runways are only 1 to 2 NM from the shoreline. Aircraft flying the Instrument Landing System approaches to Runways 28L and 28R are descending to the minimum approach altitudes in the vicinity of the shoreline, while aircraft departing on Runways 10L and 10R are in a critical phase of flight during initial climbout in that same area. For these reasons, a shoreline transition is not feasible in that area.

After full consideration of the Committee's discussions and recommendations, the FAA decided to pursue an alternative airspace design.

**Informal Airspace Meetings**

As announced in the **Federal Register** on December 4, 2012, the FAA conducted three informal airspace meetings: January 28, 2013, at the Wings Over Miami Air Museum, Miami, FL; January 29, 2013, at Miami Dade College, Miami, FL; and January 30, 2013, Miramar Town Center, Miramar, FL. (77 FR 71734). Additionally, as announced in the **Federal Register** on April 1, 2019, the FAA also held one informal airspace meeting on June 12, 2019, at Broward College, Pembroke Pines, FL. (84 FR 12146). These meetings provided interested airspace users with an opportunity to present their views and offer recommendations regarding the planned modification of the MIA Class B airspace area. The FAA received comments from 32 individuals in response to the four meetings.

*Discussion of January 2013 Informal Airspace Meeting Comments*

The FAA received a number of comments from the January 2013 meetings that pertained specifically to the proposed modification of the FLL Class C airspace area. Those comments will be addressed in a separate NPRM to be published by the FAA. Comments concerning the proposed modification of the MIA Class B airspace area are discussed below.

Several commenters were concerned about the proposed expansion of the western Class B boundary from the current 20 NM radius of MIA to the 25 NM radius. This would require northbound and southbound VFR pilots to fly farther out over the Everglades at relatively low altitudes (*i.e.,* below 3,000 feet MSL) over ''unlandable'' terrain.

The FAA acknowledges these concerns. The proposed 25 NM radius on the west side of the Class B is based on an analysis of MIA traffic and is designed to contain MIA arrivals within Class B airspace. A northbound/southbound oriented charted VFR Flyway, below 3,000 feet MSL, has since been added closer in to MIA (inside the 20 NM radius). A good operating practice for VFR aircraft operating west of MIA is to contact MIA Approach for Class B clearance and flight following service above 3,000 feet MSL, which provides safety alerts and traffic advisories.

One commenter wrote that there should be a special route for aircraft transitioning to land at Miami Executive (TMB), OPF, North Perry (HWO), and Miami Homestead General Aviation (X51) airports.

As discussed above, the Committee had similar concerns about North-South transitions through the area. As previously noted, in addition to the North-South oriented charted VFR Flyway, an East-West oriented flyway has been charted situated north of OPF and south of HWO. This VFR Flyway connects to the North-South flyway. Use of these flyways should provide access to the four airports identified by the commenter.

One commenter suggested that, instead of making changes to the Class B boundaries to keep aircraft within Class B airspace, the glide path angle (GPA) for instrument approaches should be raised from 3.0 degrees to 3.25 degrees. The commenter added that, if increasing the GPA is unacceptable, the FAA should lower the floors of the Class B shelves using increments of 100 feet rather than 1,000 feet, and that lateral boundaries should be adjusted the minimum amount necessary.

The FAA does not agree. According to instrument approach procedure design criteria, the standard GPA is 3.00 degrees. A GPA greater than 3.00 degrees is authorized when needed for obstacle clearance purposes. Since obstacle clearance is not an issue, and south Florida terrain is virtually flat, all ILS and RNP procedures at MIA utilize a 3.00 degree GPA. The suggestion to lower the floors of the Class B shelves in 100-foot increments would provide additional complexity with no benefit as altitude assignments are in 500-foot increments for VFR, and 1,000-foot cardinal altitudes for IFR. The Class B lateral boundary adjustments are proposed for containment of aircraft within the Class B and are based on an analysis of traffic at MIA.

Four commenters expressed concern about the proposed expansion of the eastern boundary of Area F from a 6 NM radius to a 7 NM radius of MIA; and about the proposed expansion of the eastern boundary of Area B from the 10 NM radius to the 13 NM radius of MIA. Two commenters wrote that the expanded Area F, with its 1,000-foot floor would affect a scenic tourist route, therefore the Class B floor in that area should remain at 1,500 feet MSL. Two commenters objected to the expansion of Area B, with its 1,500-foot floor, into what is now the 3,000-foot floor of Area D. The commenters wrote that the Class B floor in that area should be set at 2,000 feet MSL instead of 1,500 feet MSL.

The FAA does not agree with the commenters. The objective of the proposed Class B modification is to provide the least restrictive, yet safe operation around MIA. The proposed floors for Areas B and F are needed to ensure that aircraft on final approach to MIA remain inside Class B airspace, and to separate non-participating aircraft from MIA arrivals. Aircraft on instrument approach are in descent below 3,000 feet MSL to 1,500 feet MSL at the Final Approach Fix (FAF) for Runway 26R; to 1,600 feet MSL at the FAF for Runway 26L and Runway 30; or 1,700 feet MSL at the FAF for Runway 27. Raising the proposed floor to 2,000 feet MSL, as suggested, would cause an unsafe situation between IFR aircraft arriving and departing MIA, and VFR aircraft. Pilots could elect to request a clearance through the Class B and receive separation services.

Several commenters were concerned that the proposed MIA Class B modifications would prevent the use of easily recognizable landmarks, and VFR checkpoints for identifying the Class B boundaries. Specifically, they were concerned that the ability to use Krome Avenue as a reference for the western boundary of the 1,500 foot shelf, and the use of the twin diagonal canals as the western boundary of the 3,000 foot shelf would be lost.

Unfortunately, Krome Avenue is not located far enough west to provide a safe distance from traffic landing at MIA when on an east operation. The proposed Class B floors are based on aircraft altitudes and approach procedures. Aircraft arriving at MIA begin final approach descent 9.0 NM from Runway 9 at the GRITT DME fix. The 1,500 foot Class B floor is necessary in that area to avoid conflict with non-participating aircraft. Landmarks could still be used if pilots desire to contact MIA Approach for clearance to enter the Class B airspace. Nevertheless, the FAA is considering the addition of waypoints to assist with VFR navigation.

One commenter asserted that ATC never clears pilots through Class B or Class C airspace, except for occasional direct overflights.

VFR clearances through the MIA Class B airspace are approved on occasion, based on traffic volume, weather, and controller workload. Because MIA is a busy international airport, averaging approximately 1,200 operations a day, it can be difficult to accommodate a VFR transition. Even so, some 75% of the approximately 7–8 requests received per day are approved. VFR Flyways around the MIA Class B have been published on the Miami VFR TAC chart to provide alternate routes. Also, in conjunction with the proposed changes to the MIA Class B airspace, the FAA is considering

the addition of published VFR transitions and flyways to help enhance situational awareness. Additionally, VFR transitions are accommodated daily over FLL through the Class C airspace at 2,500 feet, or low-level along the shoreline, while in 2-way communication with ATC.

Several commenters explained that the proposed expansion of the Class B surface area (Area A) from the current 6 NM radius of MIA to a 7 NM radius would impact operations at Miami Executive Airport (TMB) bringing the Dadeland Shopping Center inside the Class B surface area. The commenter further noted that Dadeland Shopping Center is a charted VFR checkpoint that helps keep pilots clear of the Class B airspace, and it should remain outside the Class B.

The FAA agrees with the comments. Under the current proposal the southern boundaries of Areas A and F will be adjusted northward along an East-West line at latitude 25°42′18″ N (SW 72nd Street in the Cities of Sunset and South Miami). This would accommodate traffic transitioning to and from TMB, and keep the Dadeland Shopping Center outside the Class B airspace.

One commenter asked the FAA to consider designating charted ''VFR transition corridors'' both within and underneath the Class B airspace, to include VFR GPS named waypoints that would show up in navigation databases. The commenter suggested a Northeast-Southwest ''corridor'' through the Class B passing overhead MIA at 1,500 feet MSL (one way) and 2,000 feet MSL (opposite direction). The commenter suggested this change might reduce VFR congestion low along the coast. Another commenter suggested flyways be created for both VFR and IFR traffic whose destinations are within the South Florida area, to directly overfly MIA at 3,000 feet MSL to 5,000 feet MSL.

There currently exists a North-South oriented charted VFR Flyway west of MIA, below the 3,000-foot MSL Class B floor. Aircraft could not be accommodated over the top of MIA at 1,500 feet MSL and 2,000 feet MSL; or between 3,000 feet MSL to 5,000 feet MSL due to conflicts with existing traffic: Missed approach procedures climb to 3,000 feet MSL; initial departure altitudes from MIA are 5,000 feet MSL; and descending arrival traffic on the downwind portion of radar sequencing for the approach are typically descending from 8,000 feet MSL. When aircraft performance allows, aircraft could be cleared over the top of MIA at or above 5,500 feet MSL. The FAA will consider the addition of waypoints along VFR Flyways and the development of a VFR transition route.

One commenter questioned the need for Class B airspace in Area E northwest of MIA.

The FAA is not proposing any significant changes to the existing Area E. The area currently extends from 4,000 feet MSL to 7,000 feet MSL, between the 15 NM radius and the 20 NM radius of MIA, and bounded on the south by latitude 25°57′48″ N, and on the northeast by a line from latitude 26°05′56″ N, longitude 80°26′23″ W., to latitude 26°01′32″ N, longitude 80°23′40″W. The only proposed change is minor refinements to the coordinates that form the northeast side of Area E. Area E is needed to support operations when MIA is on an east operation. During those periods, MIA arrivals typically land on Runways 9 and 12, while departures normally use Runways 8L and 8R. Historically, wind conditions dictate operating on an east configuration approximately 65% of the year.

One commenter wrote about concerns that the Class B proposal would impact sailplane operations. Sailplanes often operate under the 5,000-foot Class B floor near TMB (*i.e.,* the current Area G). The proposed incorporation of the airspace in the current Area G into Area D, with its 3,000-foot MSL floor, would affect these operations. The commenter asked if lowering the floor north of SW 152nd Street (approximately latitude 25°38′ N) would be adequate; or if a 4,000-foot MSL floor would be acceptable. The commenter also noted that the proposed extension of the western boundary of Area D, with its 3,000-foot MSL floor, from the current 20 NM radius of MIA, out to the 25 NM radius of MIA, would probably preclude cross-country flights by sailplanes from Miami Homestead General Aviation Airport (X51). The commenter suggested using a 4,000-foot MSL floor from 20 NM to 25 NM in that area.

After reviewing the proposed Class B configuration, the FAA will adopt the commenter's suggestion in proposal. The western limit of Area D will remain at the current 20 NM radius of MIA. The FAA proposes to establish a new Area J to the west of Area D between the 20 NM and 25 NM radii of the airport. Area J would extend from 4,000 feet MSL up to 7,000 feet MSL. This change would provide additional airspace for aircraft transiting over the Everglades.

One commenter contended that the proposed extension of the east and west Class B boundaries to 25 NM seems excessive.

The FAA does not agree. Each Class B airspace area is designed based on location-specific operational and safety considerations in order to best meet the purposes of reducing the midair collision potential, containment of instrument procedures, and enhancing the efficient use of airspace. It is not unusual for Class B floors to be as low as 3,000 feet MSL between 25 NM and 30 NM from the airport. For example, at the Orlando International Airport (MCO) the Class B floor is 3,000 feet MSL between the 20 NM and 30 NM arcs south of the airport; while at the Memphis International Airport (MEM), the Class B floor is 3,000 feet MSL between the 16 NM and 30 NM arcs to the north and south of the airport. The proposed altitudes for the MIA Class B floors are based on a traffic analysis of aircraft altitudes and approach procedures at MIA.

One commenter wrote that, on the east side of the Class B, VFR pilots flying to and from the Bahamas will have to delay their climb, or accelerate their descent while flying in areas well beyond power-off gliding distance to shore, or divert several miles further south to remain clear of the Class B.

VFR pilots have the option to contact MIA Approach and request flight following. If they choose not to receive flight following and want to remain clear of the Class B, the proposed airspace modification will help ensure they are segregated from traffic operating at MIA.

One commenter contended that the proposed extension of the western Class B boundary to 25 NM (with the floor at 3,000 feet MSL), in the southwest portion of the Class B (south of Tamiami Trail) will concentrate heavy VFR traffic between 2,000 feet MSL and 3,000 feet MSL as pilots attempt to remain 2,000 feet above the Everglades National Park Special Conservation/Wildlife Area, but below the 3,000-foot Class B floor. Additionally, VFR traffic will also tend to be concentrated between the Class E airspace at Dade-Collier Training and Transition Airport (TNT) and the new western boundary of the MIA Class B airspace.

The FAA does not agree. The FAA has established a north-south charted VFR flyway below the 3,000-foot Class B floor to the west of MIA. The flyway should enable pilots to fly beneath the Class B and avoid having to deviate farther out over the Everglades or near TNT.

One commenter stated that VFR routes through Class B airspace are not generally available on Sectional Charts or on most electronic charting and navigation applications. The commenter suggested that most itinerant pilots will

be unaware of them as they appear only on the flip side of TAC.

It is correct that VFR Flyways are depicted on the reverse side of TAC. However, regardless of the navigation information sources used, part 91 ''General Operating and Flight Rules'' requires that, before beginning a flight, pilots shall become familiar with all available information concerning that flight. This is particularly important when planning a flight through the congested, high traffic volume South Florida area. The Miami Sectional Chart contains a note that reads: ''Pilots are encouraged to use the Miami VFR Terminal Area Chart for flights at or below 7,000 feet''.

One commenter was concerned that the airspace configurations in South Florida are already very congested and confusing.

The FAA agrees that the airspace configurations in South Florida are very congested and careful vigilance must be maintained. In addition to the air traffic operations at MIA, within the roughly 40 NM stretch between HST and FLL, there are six airports with significant operations, plus extensive flight training and general aviation activity. The design of the MIA Class B is intended to contain large turbine-powered aircraft operations at MIA, and segregate those operations from non-participating VFR traffic while at the same time providing the least restrictive, safe operation in the Miami area.

Another commenter said multiple airspace designations are confusing and need to be corrected or clarified. Specifically, the ceiling of the TMB Class D airspace area is 2,500 feet MSL which is higher than the 2000-foot floor of the MIA Class B airspace (*i.e.,* Area C of the MIA Class B airspace area) that overlies a portion of the TMB Class D. The commenter suggested that confusion could exist as to which rules apply.

The Aeronautical Information Manual (AIM) clarifies this issue stating that there is a hierarchy of overlapping airspace designations. When overlapping airspace designations apply to the same airspace, the operating rules associated with the more restrictive airspace designation apply. Therefore, Class B rules apply in the example described by the commenter.

For simplification, a commenter suggested that the ''half-moon shaped'' Class B airspace area with the 2,000-foot MSL north of TMB (*i.e.,* Area C) be removed and the Class B floor in that area be lowered to 1,500 feet MSL.

The FAA does not agree with this suggestion. The design of each Class B airspace is individually tailored, in this case, for MIA operations. To lower the Class B floor for simplification as suggested is neither warranted nor appropriate. The 2,000-foot MSL floor in Area C is for the benefit of traffic at TMB. It allows aircraft remaining below 2,000 feet MSL northeast of TMB to remain clear of the MIA Class B airspace.

To simplify the MIA Class B airspace, a commenter proposed that the northern portion of Area D (north of latitude 25°57′48″ N) be removed from the MIA Class B airspace area and made part of the FLL Class C airspace area. This would simplify airspace design and make easier transitions inbound and outbound from HWO.

The FAA is unable to modify Area D as suggested. This airspace must remain in the Miami Class B because it was designed to contain aircraft once they enter the Class B airspace, such as aircraft arriving Runway 12 at MIA. Removing that airspace from the Miami Class B is not feasible and would be detrimental to safety.

One commenter stated that the proposed extension of Class B airspace and dropping of the base to the East and South would increase noise pollution over residential areas.

The objective of this proposed airspace modification is to provide the least restrictive operation while maintaining safety. The southeast extension of Class B airspace to 25 NM east based upon traffic analysis and is needed to contain aircraft within Class B airspace. The proposed modifications to the east of MIA are over the Atlantic Ocean and have limited impact to residential areas.

*June 2019 Informal Airspace Meeting Comments*

Over 60 people attended the June 2019 Informal Airspace Meeting. Ten persons submitted multiple comments to the FAA. A number of comments pertained specifically to the proposed FLL Class C airspace modification. Those comments will be addressed in a separate NPRM that will propose modifications to the FLL Class C airspace area. Comments pertaining to the proposed MIA Class B modification are discussed below.

Two commenters expressed concerns that receiving VFR flight following in the area can be challenging due to air traffic controller workload, and that consideration should be given to adequate staffing to provide this additional service routinely.

The airspace change would affect the Miami Terminal Radar Approach Control (TRACON) controller workload with the anticipated increase of aircraft requesting flight following. The FAA has already taken action to address this concern. The FAA has increased the utilization of its additional radar sectors that provide relief for controllers working in the OPF/HWO area. These additional sectors split the workload in half (east side and west side). The FAA also recommends that pilots consider obtaining discrete squawk codes with air traffic control towers prior to departure to ensure that flight following in VFR conditions can commence shortly after departure.

Two commenters requested that VFR Corridors be provided through the MIA Class B airspace; such as, along the coast, and over the top of airports. Flying around the airspace to the west places an aircraft over the Everglades and far from alternative landing sites.

As described above in the ''Clarification of Terms'' section, a VFR Corridor is essentially a ''hole'' through the Class B airspace in which aircraft can operate without an ATC clearance or communication with air traffic control. Such a corridor is not feasible through the MIA Class B based on operational constraints, including traffic volume and traffic flows and the close proximity of numerous airports in this area. Arrival traffic descends from 8,000 feet MSL to 3,000 feet MSL in the downwind for MIA. Departures climb to 5,000 feet initially, and aircraft executing a go-around climb to either 3,000 feet MSL or 4,000 feet MSL. For operational and safety reasons, these factors preclude the establishment of a VFR corridor. However, the FAA is considering the development of a published VFR transition route for use when it is feasible for controllers to clear an aircraft into the airspace to transition the area. VFR transition routes require an ATC clearance prior to entering Class B airspace on the route (see the ''Clarification of Terms'' section, above). Currently, a VFR Flyway is depicted on the VFR Flyway Planning Chart (on the reverse side of the Miami TAC Chart). This VFR Flyway is oriented North-South and is located under the western side of the MIA Class B airspace area. The suggested altitude for the flyway is below 3,000 feet MSL. The VFR Flyway offers an alternative to deviating farther west around the Class B over the Everglades.

One commenter asked that the FAA reconsider the proposal to expand the surface area (Area B) because many small planes use that space to avoid intruding on arriving and departing aircraft in the Class B.

The FAA is proposing to expand Area B from the current 6 NM radius of MIA

to a 7 NM radius of MIA. The one NM expansion of Area B is necessary to ensure containment of arriving aircraft within Class B airspace. Currently, arrivals briefly exit, then re-enter Class B airspace on final approach. FAA directives require that Class B airspace be designed to contain all instrument procedures within Class B airspace, and that surface areas must encompass all final approach fixes and minimum altitudes at those fixes. Therefore, the proposed 7 NM radius is required to comply with the containment criteria.

One person submitted a comment regarding the Florida Metroplex Project. The comment is outside the scope of this MIA Class B rulemaking action. This comment was referred to the Florida Metroplex Team for review.

One person commented that the FAA should publish Letters of Agreement (LOA) that are developed between ATC facilities and make them easy to access.

As an initial matter, this comment falls outside the scope of this rulemaking. Moreover, LOAs between ATC facilities outline procedures between facilities to allow for a standard operation, such as interfacility coordination, etc. LOAs do not dictate procedures that pilots who are not operating under ATC instructions need to follow. Because LOAs outline the handling of aircraft and interaction between ATC facilities, they are not made readily available to pilots. Whenever a pilot is uncertain about an ATC clearance or instruction, that pilot must immediately request clarification from ATC.

Two persons commented on the Class D airspace ceiling at satellite airports that underlie a Class B or Class C airspace shelf. In such cases, the Class D altitude ceiling might overlap into the overlying Class B or Class C airspace. The commenters said that the ceiling of the Class D airspace should be consistent with the floor of the overlying Class B or Class C airspace. This would assist pilots with awareness of the airspace and avoiding airspace violations by mistake.

As described previously, the Aeronautical Information Manual states that, when overlapping airspace designations apply, the operating rules associated with the more restrictive airspace designation apply. This is applicable in the case of the TMB Class D airspace (with a ceiling of 2,500 feet MSL). Area C of the MIA Class B airspace, which has a floor of 2,000 feet MSL, overlaps a portion of the TMB Class D airspace. Therefore, Class B operating rules apply in that overlapping portion. The proposed modifications to the MIA Class B airspace would also incorporate the airspace above the remainder of the TMB Class D into an expanded MIA Class B Area D with its Class B floor of 3,000 feet MSL. In this case, Class E airspace would exist in the gap between the 2,500 foot ceiling of the Class D airspace, and the overlying 3,000 foot floor of Class B airspace. These configurations are not unique to the MIA Class B airspace and can be found at other Class B locations in the United States. It is incumbent upon the pilot to become familiar with the airspace configuration when planning a flight.

Other commenters requested the FAA to incorporate a combination of GPS waypoints and recognizable ground features as VFR landmarks (such as the Dadeland Shopping Mall) into the airspace design to assist pilots in determining the Class B boundaries.

The FAA agrees with these comments and incorporated several updates into the proposal. The following are examples ground references added to the proposed Class B description:

In Area A (surface area), instead of the southern portion of the area being defined by the proposed 7 NM radius, the southern boundary would be moved northward to lat. 25°42′18″ N, along SW 72nd Street in the cities of Sunset and South Miami. This would keep the Dadeland Shopping Mall outside the surface area, allowing VFR aircraft to have continued use of that established check point for arrivals and departures out of the TMB area.

In Area B, the western boundary would be moved from the current 10 NM radius of MIA slightly westward to run along Krome Avenue, providing pilots with a visual reference for that boundary.

In the proposed new Area G (that airspace currently designated Area H), the northwestern boundary would be aligned with State Road 997/Krome Avenue. The Eastern boundary would be defined by the Miami Canal (paralleling US 27), and the Northern boundary point defined by the intersection of the Miami Canal and State Road 997/Krome Ave. The eastern boundary of the proposed new Area H would be defined by State Road 997/Krome Avenue. Aligning these boundaries with streets and other ground references should assist pilots with visual identification of the boundaries. The FAA is also considering the addition of waypoints to enhance pilot navigation in the MIA/FLL terminal area.

One commenter was concerned about the impact on sailplane operations from Miami Homestead General Aviation Airport (X51). Sailplane operations routinely use the airspace overlying TMB up to 4,000 feet MSL. The proposed lowering of the Class B floor to 3,000 feet MSL overlying TMB would inhibit operations. The commenter suggested a 4,000 foot Class B floor in that area instead.

Consideration was given to keeping the Class B floor over TMB unchanged. However, due to the recurrence of aircraft exiting the current MIA Class B either while on the downwind, on departure during a west operation, on vectors after a go-around event, or while on an instrument approach, the change is necessary to comply with the requirement to contain instrument procedures within Class B airspace.

One commenter requested the FAA to form a new Ad Hoc Committee to provide updated recommendations regarding the proposed airspace design.

The FAA originated the Ad Hoc Committee concept as a means to get preliminary user input during the initial design phase of Class B and C airspace proposals, prior to the issuance of an NPRM.

The FAA carefully considered the request to form a second Ad Hoc Committee. After full consideration of the Committee's concerns and recommendations, including the Committee's stated desire that the FAA mitigate the impact to operators outside the Class B, and improve the design originally presented to the Committee, the FAA re-evaluated the airspace design requirements for the airspace surrounding MIA and FLL. Based on that re-evaluation, the FAA will pursue an alternative design. Instead of establishing Class B airspace at FLL, the FAA decided to retain, but modify the Class C at FLL, as well as modifying the MIA Class B. This would result in less impact to the VFR and general aviation community.

Based on the above, the FAA concluded that sufficient feedback was received so that FAA could develop and publish the airspace proposal in an NPRM. The NPRM's 60-day comment period provides additional opportunity for the public to submit their views on the proposed MIA Class B airspace modification. Therefore, the FAA has decided against reforming an Ad Hoc Committee for this proposal.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 to modify the Miami International Airport, FL, (MIA) B airspace area. This action (depicted on the attached graphic) would modify the lateral and vertical limits of Class B airspace to ensure the containment of large turbine-powered aircraft at MIA in

Class B airspace once they enter the airspace, and enhance safety in the Miami terminal area.

The FAA will be issuing a separate NPRM to propose modifications to the Fort Lauderdale-Hollywood International Airport (FLL) Class C airspace area that is located immediately to the north of the MIA Class B airspace area.

The proposed modifications to the MIA Class B airspace area are discussed below.

In the text header of the MIA Class B airspace description, (as published in FAA Order 7400.11E), the geographic coordinates for MIA would be updated to read ''lat. 25°47′43″ N, long. 080°17′24″ W'' The name of the ''Kendall-Tamiami Executive Airport'' would be changed to its current name ''Miami Executive Airport,'' and its geographic coordinates would be updated to read ''lat. 25°38′51″ N, long. 080°25′59″ W'' These changes reflect the current National Airspace System Resources database information.

*Area A.* Area A would continue to extend upward from the surface to 7,000 feet MSL. The FAA proposes to modify Area A by expanding the current 6 nautical mile (NM) radius to a 7 NM radius of the MIA International Airport. This would resolve issues where aircraft exit and re-enter Class B airspace on final approach. Area A would also be modified by excluding that airspace ''South of lat. 25°42′18″ N (SW 72nd Street in the cities of Sunset and South Miami).'' This would move the southern boundary of the surface area north of the Dadeland Shopping Center keeping it outside the surface area, and allowing VFR aircraft to have continued use of that charted VFR checkpoint for arrivals and departures out of the TMB area.

*Area B.* Area B extends from 1,500 feet MSL to 7,000 feet MSL. The FAA proposes to modify Area B by extending the current eastern boundary from the 10 NM radius of MIA out to the 13 NM radius of the airport. This change would both contain MIA arrivals within Class B airspace, and provide protection for VFR aircraft transitioning under the Class B airspace. Additionally, the western boundary of Area B would be moved from the current 10 NM radius of MIA slightly westward to run along Krome Avenue, providing pilots with a visual reference for that boundary. To assist with visual identification of the northern boundary of Area B (along lat. 25°53′03″ N), the street reference ''NW 103rd Street/49th Street in the City of Hialeah'' would be added to the description.

*Area C.* Area C extends from 2,000 feet MSL to 7,000 feet MSL. The only proposed change to this area is to extend the boundary formed by the existing 4.3 NM radius of TMB southwestward (counterclockwise) to intersect the western boundary of the new Area H (*i.e.,* the 13 NM radius of MIA), as described below.

*Area D.* Area D extends from 3,000 feet MSL to 7,000 feet MSL. Originally, the FAA proposed to expand Area D's western boundary from the current 20 NM radius west of MIA, further westward to the 25 NM radius of MIA. Based on comments received, the FAA decided to retain the western boundary of Area D at the current 20 NM radius of MIA. The FAA proposes to establish Area J (west of Area D, described below) between the 20 NM and 25 NM radii of MIA. Area J would extend from 4,000 feet MSL to 7,000 feet MSL, providing additional altitudes for transiting aircraft. The FAA further proposes to incorporate that airspace above TMB, that is currently designated ''Area G,'' into Area D. The existing Area G extends from 5,000 feet MSL to 7,000 feet MSL. Incorporating this airspace into Area D would lower the floor of Class B airspace in that area to 3,000 feet MSL. This change would protect southbound departures from MIA during a west operation. The ''Area G'' designation would be reused elsewhere in the MIA Class B as described later.

*Area E.* The only proposed change to Area E is minor updates to the latitude/longitude coordinates that define the northeast side of the area for greater accuracy.

*Area F.* Area F extends from above 1,000 feet MSL to 7,000 feet MSL. The eastern boundary of Area F would be extended from the current 6 NM radius of MIA out to the 7 NM radius of MIA. The south end of Area F would be moved slightly northward to lat. 25°42′18″ N to align with the proposed new southern boundary of Area A.

*Area G.* A new Area G would be designated in that airspace west of OPF that is currently designated Area H (the H designation would be reused as described below). The northwestern boundary of the existing Area H is the 10 NM radius from MIA. In the proposed new Area G, this boundary would be expanded further to the northwest to align with State Road 997/Krome Avenue. The new Area G would consist of that airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL, bounded on the South by lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), on the West and Northwest by State Road 997/Krome Ave, on the East by the Miami Canal (paralleling US 27), and the Northern boundary point defined by the intersection of the Miami Canal and State Road 997/Krome Ave. Aligning boundaries with streets and other ground references would assist with visual identification of the boundaries.

*Area H.* Area H is a proposed new area that would extend from 2,000 feet MSL to 7,000 feet MSL. It would be located directly west of the Area B western boundary. Area H would be bounded on the east by State Road 997/Krome Avenue; on the south by the 4.3 NM radius of TMB (the northern boundary of Area C); and on the west by the 13 NM radius of MIA. Area H would provide containment of MIA arrivals in Class B airspace. Its base altitude of 2,000 feet MSL, and the visual reference provided by Krome Avenue, would allow VFR aircraft to transition just west of Krome Avenue below 2,000 feet MSL without conflicting with MIA arrivals.

*Area I.* The FAA proposes to establish a new Area I, located east of MIA between the 20 NM and 25 NM radii from the airport. Area I would extend from 5,000 feet MSL to 7,000 feet MSL. The area would be bounded by that airspace beginning at the intersection of lat. 25°57′48″ N and the 20 NM radius of MIA, thence moving East along lat. 25°57′48″ N to the intersection of a 25 NM radius of MIA, thence moving clockwise along the 25 NM radius to the Dolphin VORTAC 151°(T)/155°(M) radial, thence Northwest along the Dolphin VORTAC 151°(T)/155°(M) radial to the intersection of a 20 NM radius of MIA, thence counter-clockwise along the 20 NM radius to the point of beginning. This expansion is needed to contain aircraft on the downwind within Class B airspace. The 5,000 foot MSL base altitude of Area I gives VFR aircraft transitioning the area over water the ability to fly under the Class B airspace.

*Area J.* The FAA proposes to establish a new Area J located west of MIA between the 25 NM and 20 NM radii from the airport. Area J would extend from 4,000 feet MSL to 7,000 feet MSL. The area would be bounded by that airspace beginning northwest of MIA at the intersection of a 25 NM radius of Miami International Airport and lat. 25°57′48″ N, thence east along lat. 25°57′48″ N to the intersection of a 20 NM radius of Miami International Airport, thence counter-clockwise along the 20 NM radius to lat. 25°40′19″ N, thence west along lat. 25°40′19″ N to the intersection of a 25 NM radius of Miami International Airport, thence clockwise along the 25 NM radius to the point of beginning.

In summary, the existing MIA Class B airspace design does not currently

address the rapidly increasing general aviation and air carrier operations in the South Florida terminal area. The proposed Class B modification would provide:

—Containment of MIA arrivals and departures in Class B airspace;
—Increased safety by segregation of large turbine-powered aircraft from nonparticipating traffic during critical stages of flight;
—Improved utilization of airspace;
—Improved traffic patterns that allow for stabilized approaches;
—Reduced workload for both pilots and controllers; and,
—Enhanced overall efficiency of the movement of air traffic in the area.

**Note:** A color graphic of the proposed MIA Class B airspace will be sent for posting on the regulations.gov website (*https://www.regulations.gov*) following the publication of this NPRM in the **Federal Register**. Use the search term FAA–2020–0490.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class B airspace proposed in this document would be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## 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. We have determined that there is no new information collection requirement associated with this proposed rule.

## Regulatory Notices and Analyses

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 proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Is expected to have a minimal cost impact, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not significant under DOT's administrative procedure rule on rulemaking at 49 CFR 5.13; (4) not have a significant economic impact on a substantial number of small entities; (5) not create unnecessary obstacles to the foreign commerce of the United States; and (6) 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.

As discussed above, the FAA determined that changes put forth in this proposed rule would increase airspace safety and efficiency. The proposed rule would modify the lateral and vertical limits of Class B airspace around Miami International Airport (MIA) impacting commercial and general aviation flights transiting the airspace at the time of writing. The proposed modification is in response to increased commercial and general aviation activity at and near MIA airport at the time of writing. Currently, MIA Class B airspace does not fully contain aircraft flying instrument procedures at MIA. Aircraft routinely exit and re-enter MIA Class B airspace on final approach to MIA leading to safety issues with respect to flight separation between participating and non-participating aircraft outside of Class B airspace.

The modifications proposed in this NPRM are intended only to expand Class B airspace, where necessary, to contain large, turbine-powered aircraft while minimizing the impact on the use of the airspace by other aircraft. An analysis of existing MIA traffic flows shows that the proposed Class B airspace modifications would better contain IFR flights arriving and departing MIA inside Class B airspace, and provide better separation between IFR aircraft and VFR aircraft operating in the vicinity of the Class B airspace area. Constructing sufficient airspace for safe control and separation of IFR flights improves the flow of air traffic, and more importantly enhances safety, reducing the potential for midair collision in the MIA terminal area.

The proposed expansion to Class B airspace would affect the VFR and general aviation community. VFR operators would need to adjust their routes for the modified MIA Class B airspace. However, as mentioned above, the FAA initiated outreach between 2010 and 2019 for input and recommendations from the effected aviation community on the planned modifications to the MIA airspace. The feedback resulted in changes to the airspace design with the intent of maintaining safety and minimizing the impact to operators using the surrounding airspace. Additionally, VFR operators can use the current north-south charted VFR Flyway below the 3,000-foot Class B floor to the west of MIA, which enables pilots to fly beneath the Class B, or contact MIA Approach to request flight following, if desired, to lessen the impact. Therefore, the FAA expects the Class B modifications in this proposal would result in minimal cost to VFR operators. The FAA requests comments on the benefits and costs of this proposal to inform the final rule.

The discussion presented in this section reflects conditions that predate the public health emergency concerning the novel coronavirus disease (COVID–19) in 2020. At the time of writing, there is uncertainty surrounding the timing of recovery and the long-term effects from the public health emergency. To the extent that there are lingering or lasting changes to general aviation and air carrier operations, the benefits and costs of the MIA Class B airspace modification in this proposal may vary relative to the level of future operations.

## 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. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would modify Class B airspace around MIA. The change would affect general aviation operators using the airspace at or near MIA. Operators flying VFR would need to adjust their flight paths to avoid the modified Class B airspace. However, the modifications to Class B airspace are intended to be the least restrictive option while maintaining safety. Additionally, VFR operators can also use the current north-south charted VFR flyway below the 3,000-foot Class B floor to the west of MIA, which enables pilots to fly beneath the Class B or VFR pilots have the option to contact Miami Approach and request flight following, if desired. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

**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 as 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 proposed rule and determined that it would improve safety and is consistent with the Trade Agreements Act.

**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 $155 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

**ICAO Considerations**

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Policy, Rule and Regulations Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Department of State responded with no objection to the proposed expansion of the Miami Class B airspace area. The Department of Defense Policy Board on Federal Aviation (PBFA) concurred with comment. The PBFA noted concerns that extending these areas into international airspace places additional restrictions and equipage requirements on aircraft transiting therein; and such ATC expansions could set a precedent for foreign nations to exert more restrictive control measures in other international airspaces without limits to lateral confines, in the interest of commerce and safety.

**Environmental Review**

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

**Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This proposed rule is not an Executive Order 13771 regulatory action because this proposal is not significant under Executive Order 12866.

**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(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and

effective September 15, 2020, is amended as follows:

*Paragraph 3000 Subpart B—Class B Airspace.*

* * * * *

**ASO FL B Miami, FL**

Miami International Airport (Primary Airport)
(Lat. 25°47′43″ N, long. 080°17′24″ W)
Miami Executive Airport (TMB)
(Lat. 25°38′51″ N, long. 080°25′59″ W)
Dolphin VORTAC (DHP)
(Lat. 25°48′00″ N, long. 080°20′57″ W)

*Boundaries.*

*Area A.* That airspace extending upward from the surface to and including 7,000 feet MSL within a 7 nautical mile radius of Miami International Airport, excluding that airspace North of lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), and the airspace South of lat. 25°42′18″ N (SW 72nd Street in the Cities of Sunset and South Miami), and within and underlying Area F described hereinafter.

*Area B.* That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within a 13 nautical mile radius of Miami International Airport, excluding that airspace North of lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), and that airspace South of lat. 25°40′19″ N, within Area A previously described, and within Areas C, F, and H described hereinafter.

*Area C.* That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within an area bounded on the North and Northeast by a 4.3 nautical mile radius of Miami Executive Airport (TMB), and on the South by lat. 25°40′19″ N, and on the Southwest by a 13 nautical mile radius of Miami International Airport.

*Area D.* That airspace extending upward from 3,000 feet MSL to and including 7,000 feet MSL beginning Northwest of Miami International Airport at the intersection of a 20 nautical mile radius of Miami International Airport and lat. 25°57′48″ N, thence East along lat. 25°57′48″ N to the intersection of a 15 nautical mile radius of Miami International Airport, thence clockwise along the 15 nautical mile radius to lat. 25°57′48″ N, thence East along lat. 25°57′48″ N to the intersection of a 20 nautical mile radius of Miami International Airport, thence clockwise along the 20 nautical mile radius to the Dolphin VORTAC (DHP) 151° radial, thence Northwest along the Dolphin VORTAC (DHP) 151° radial to the intersection of a 15 nautical mile radius of Miami International Airport, thence clockwise along the 15 nautical mile radius of Miami International Airport to lat. 25°40′19″ N, thence West along lat. 25°40′19″ N to the intersection of a 20 nautical mile radius of Miami International Airport, thence clockwise along the 20 nautical mile radius to the point of beginning, excluding the airspace within Areas A, B, and C, previously described and within Areas F, G, and H described hereinafter.

*Area E.* That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL bounded on the South by lat. 25°57′48″ N, on the Northwest by a 20 nautical mile radius of Miami International Airport, on the Northeast by a line from lat. 26°06′02″ N, long. 80°26′27″ W, to lat. 26°01′38″ N, long. 80°23′44″ W, and on the Southeast by a 15 nautical mile radius of Miami International Airport.

*Area F.* That airspace extending upward from but not including 1,000 feet MSL to and including 7,000 feet MSL bounded on the East by a 7 nautical mile radius of Miami International Airport, on the West by the West shoreline of Biscayne Bay, and on the South by lat. 25°42′18″ N (SW 72nd Street in the Cities of Sunset and South Miami).

*Area G.* That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL bounded on the South by lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah), on the West and Northwest by State Road 997/Krome Ave, on the East by the Miami Canal (paralleling US 27), and the Northern boundary point defined by the intersection of the Miami Canal and State Road 997/Krome Ave.

*Area H.* That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL bounded on the West by a 13 nautical mile radius of Miami International Airport, on the South by a 4.3 nautical mile radius of Miami Executive Airport (TMB), on the East by State Road 997/Krome Ave, and on the North by a line along lat. 25°52′03″ N (NW 103rd Street/49th Street in the City of Hialeah).

*Area I.* That airspace extending upward from 5,000 feet MSL to and including 7,000 feet MSL bounded beginning at the intersection of lat. 25°57′48″ N and a 20 nautical mile radius of Miami International Airport, thence moving East along lat. 25°57′48″ N to the intersection of a 25 nautical mile radius of Miami International Airport, thence moving clockwise along the 25 nautical mile radius to the Dolphin VORTAC 151° radial, thence Northwest along the Dolphin VORTAC 151° radial to the intersection of a 20 nautical mile radius of Miami International Airport, thence counter-clockwise along the 20 nautical mile radius to the point of beginning.

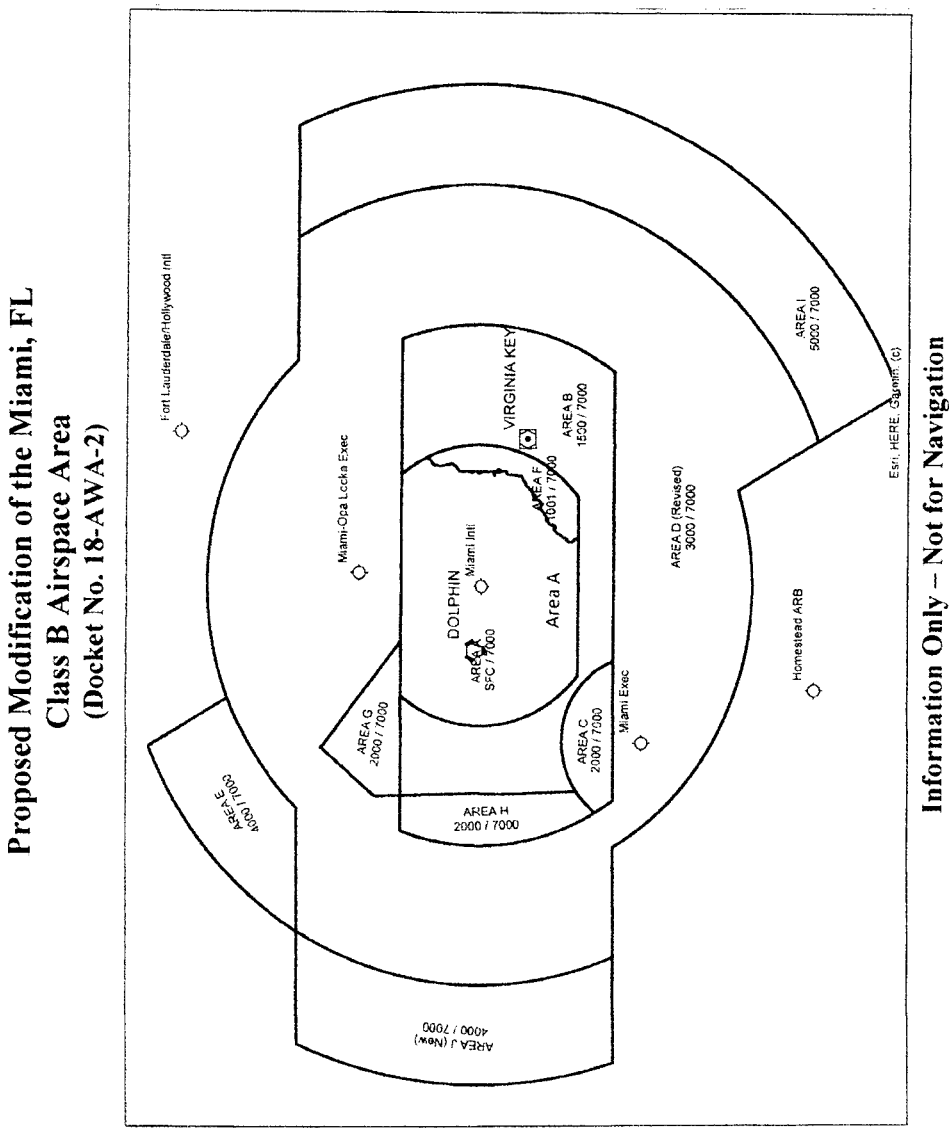
*Area J.* That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL beginning northwest of Miami International Airport at the intersection of a 25 nautical mile radius of Miami International Airport and lat. 25°57′48″ N, thence east along lat 25°57′48″ N to the intersection of a 20 nuatical mile radius of Miami International Airport, thence counter-clockwise along the 20 nautical mile radius to lat 25°40′19″ N, thence west along lat. 25°40′19″ N to the intersection of a 25 nautical mile radius of Miami International Airport, thence clockwise along the 25 nautical mile radius to the point of beginning.

* * * * *

Issued in Washington, DC, on February 22, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*




[FR Doc. 2021–03968 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[Docket No. RM96–1–042]**

### Standards for Business Practices of Interstate Natural Gas Pipelines

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing to amend its regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 3.2) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines in place of the currently incorporated version (Version 3.1) of those business practice standards. The revisions made by NAESB in this version of the standards are designed to enhance the natural gas industries' system and software security measures and to clarify the processing of certain business transactions.

**DATES:** Comments are due April 19, 2021.

**ADDRESSES:** Comments, identified by the docket number of this proceeding, may be filed electronically at *https://www.ferc.gov/* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or may be hand delivered. Mailed comments should be addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures. The Comment Procedures Section of this document contains more detailed filing procedures.

**FOR FURTHER INFORMATION CONTACT:**

Stanley Wolf (Technical Issues), Office of Energy Policy and Information, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6841

Oscar F. Santillana (Technical Issues), Office of Energy Market Regulation, Federal Energy Regulatory

Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6392

Robert McLean (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

**SUPPLEMENTARY INFORMATION:**

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1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 284.12 to incorporate by reference, with certain enumerated

2. exceptions,[1] the latest version (Version 3.2) of business practice standards adopted by NAESB's WGQ applicable to natural gas pipelines that NAESB reported to the Commission on August 17, 2020 in place of the currently incorporated version (Version 3.1) of those business practice standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the natural gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act (NGA). In addition, the proposed revisions are necessary to enhance the natural gas industries' computer security requirements.[2]

## I. Background

3. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[3] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference, this version of the standards will replace the currently incorporated version (Version 3.1) of those business practice standards.

4. On August 17, 2020, NAESB filed a report informing the Commission that it had adopted and ratified WGQ Version 3.2 of its business practice standards applicable to interstate natural gas pipelines. Version 3.2 of the WGQ includes business practice standards developed and modified in response to industry requests and directives from the NAESB Board of Directors. This version also includes the standards developed in response to the recommendations of Sandia National Laboratory (Sandia),[4] which in 2019 issued a cybersecurity surety assessment of the NAESB standards sponsored by DOE (Sandia Surety Assessment),[5] and the standards developed to enable the use of distributed ledger technologies when transacting the NAESB Base Contract for Sale and Purchase of Natural Gas.

5. The NAESB report identifies all the changes made to the WGQ Version 3.1 Standards and summarizes the deliberations that led to the changes being made. It also identifies changes to the existing standards that were considered but not adopted due to a lack of consensus or other reasons.

## II. Discussion

6. In this NOPR, we propose to incorporate by reference, in our regulations, Version 3.2 of the NAESB WGQ consensus business practice standards, with certain exceptions.[6] We propose that compliance filings made in accordance with a final rule be made 120 days after issuance of a final rule in this proceeding or on the first business day thereafter if falling on a weekend or holiday, with an effective date 180 days from the date compliance filings are due in this proceeding or the first business day thereafter if falling on a weekend or holiday. This will allow time for the Commission to process the compliance filings before the effective date of the new standards.

7. As the Commission found in Order No. 587, adoption of consensus standards is appropriate, because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover,

[1] As explained below, we are not proposing in this proposed rule to incorporate by reference the optional model contracts and the eTariff-related standards included in the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Version 3.2 package of business practice standards.

[2] As explained below, NAESB has developed and adopted, in conjunction with Sandia National Laboratories, a series of business practice standards to protect the natural gas industries' internet security.

[3] This series of orders began with the Commission's issuance of *Standards for Bus. Practices of Interstate Nat. Gas Pipelines,* Order No. 587, 61 FR 39053 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038 (1996) (cross-refenced at 76 FERC ¶ 61,042).

[4] Sandia is a multidisciplinary national laboratory and federally funded research and development center for the U.S. Department of Energy's (DOE) National Nuclear Security Administration that supports numerous federal, state, and local government agencies, companies, and organizations.

[5] In April 2017, NAESB announced that Sandia, through funding provided by DOE, would be performing a surety assessment of the NAESB standards. As determined by Sandia and DOE, the purpose of the surety assessment was to analyze cybersecurity elements within the standards, focusing on four areas: (1) The NAESB Certification Program for Accredited Certification Authorities, including the Wholesale Electric Quadrant (WEQ)-012 Public Key Infrastructure Business Practice Standards, the NAESB Accreditation Requirements for Authorized Certificate Authorities, and the Authorized Certification Authority Process; (2) the WEQ Open Access Same-Time Information Systems suite of standards; (3) the WGQ and Retail Markets Quadrant internet Electronic Transport (IET) and Quadrant Electronic Delivery Mechanism (EDM) Related Standards Manual; and (4) a high-level dependency analysis between the gas and electric markets to evaluate the different security paradigms the markets employ.

[6] In the discussion below we identify the NAESB WGQ Version 3.2 Standards that we propose *not* to incorporate by reference.

because the industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, to carry out policy objectives or activities.

8. We discuss below some specific aspects of NAESB's report.

*A. Modifications to Previous Version of Standards*

1. Modifications in Response to the Sandia Surety Assessment

9. NAESB revised previously incorporated standards and developed new standards in response to the recommendations in the Sandia Surety Assessment. Specifically, NAESB adopted revisions to the WGQ EDM Related Business Practice Standards, which establish the framework for the electronic dissemination and communication of information between parties in the North American wholesale gas marketplace, and to the WGQ IET Related Business Practice Standards, which define the implementation of various technologies necessary to communicate transactions and other electronic data using standard protocols for electronic commerce over the internet between trading partners. First, NAESB adopted two new standards, 4.3.109 and 10.3.28, to provide that trading partners should evaluate software fixes or patches for known vulnerabilities within 30 days and implement the fix or patch as soon as reasonably practicable based on the severity of the risk. Second, NAESB adopted two new standards, 4.3.110 and 10.3.29, to provide that trading partners should mutually agree to the version of the EDM and IET to be used. Third, the new standards specify notification and coordination timelines with trading partners, where applicable, to address vulnerable systems or software as soon as possible. Fourth, the Sandia Surety Assessment recommended that NAESB consider guidelines for configuration and logging, network traffic monitoring, alerting systems, and manual continuity of operations in the event of abnormal behavior or failure conditions within the system. In response, NAESB added language to new Standards 4.3.110 and 10.3.28 to include both specific and broad adoptions of such system security measures.

10. Further, NAESB added language to existing Standards 4.3.60, 4.3.61, 10.2.33, and 10.3.25 to clarify the Transport Layer Security protocol,[7] which encrypts data to hide information from electronic observers on the internet. NAESB also deleted all references to the Secure Sockets Layer protocol in the standards.

11. Concerning identification key lengths, the Sandia Surety Assessment recommended that Rivest-Shamir-Adelman keys [8] must be no shorter than 2048 bits, Elliptic Curve Digital Signature Algorithm keys [9] must be no shorter than 224 bits, Hash [10] algorithms should be from the Secure Hash Algorithm (SHA)-2 [11] or SHA–3 families, and acceptable Advanced Encryption Standard key lengths range from 128, to 192, to 256. The Sandia Surety Assessment recommended that, in general, implementors use the largest feasible key length consistent with implementation of current business processes. In response, NAESB deleted Standard 4.3.83 to remove legacy support references and maintain a minimum encryption strength of 128 bits. Further, NAESB revised existing Standards 10.2.34 and 10.3.15 to delete a proprietary Pretty Good Privacy (PGP) [12]-related hyperlink and to accommodate license-free OpenPGP,[13] respectively. NAESB also adopted a new Standard 10.2.39 to specify that OpenPGP should be used to create public and private keys for privacy and digital signature applications.

12. Further, NAESB revised existing Standards 4.3.60, 4.3.84, 10.3.4, and 10.3.16 to specify Hyper-Text Transport Protocol Secure (HTTPS),[14] which is an encrypted version of Hyper-Text Transport Protocol (HTTP),[15] whenever a secure communication is required to protect information in transit and support overall privacy needs. Moreover, NAESB revised existing Standards 4.3.60 and 10.3.16 to require multi-factor (*e.g.,* two-factor) authentication on an individual basis and state that secure websites should employ individual user credentials.

2. Modifications in Response to Industry Request

13. The following section describes standards development efforts undertaken by NAESB in response to industry requests or through the normal course of WGQ activities that resulted in modifications to the Nomination Related Standards, QEDM Standards, and an effort that impacted multiple sets of standards. NAESB made corresponding revisions, where appropriate, to the related data sets and technical implementation as part of the standards development effort.

a. Nomination Related Standards

14. NAESB revised existing Standards 1.3.27, 1.4.1, and 1.4.2 to add a new data element ''Capacity Block ID'' to allow a Service Requester to determine which primary point rights of the contract their segmented nomination [16] is using and eliminate an existing manual business process from the TSP to automate the business process.

b. Quadrant Electronic Delivery Mechanisms Related Standards

15. NAESB developed two new standards, Standard 4.3.107 to establish a standard data retention period for retrieval of Operationally Available data from the Informational Postings website, and Standard 4.3.108, to establish a standard data retention period for retrieval of Notices for the subcategories of Critical, Non-Critical and Planned Service Outage from the Informational Postings website.

[7] The National Institute of Standards and Technology Special Pub. 800–52 requires government Transport Layer Security servers and clients to support Transport Layer Security Version 1.2 and recommends support for Transport Layer Security Version 1.3 by the year 2024.

[8] Rivest-Shamir-Adelman is a public key infrastructure algorithm composed of a public component and a private component that is typically installed on a recognized Certificate Authority.

[9] Elliptic Curve Digital Signature Algorithm public keys generate an encrypted signature to validate data.

[10] A Hash is cryptology technique used for digital signatures in which a series of numbers that may represent, for example, a password, an image, a document, or an executable file is used to generate a cryptographic hash (*i.e.,* a large number).

[11] SHA–2 is a set of cryptographic hash functions.

[12] PGP is a proprietary (*i.e.,* an organization must pay to use it) encryption program developed to enhance the confidentiality and integrity of data.

[13] OpenPGP is an encryption standard defined by the Internet Engineering Task Force enabling design and implementation free of licensing fees. At present, the encryption method is generally considered the most secure.

[14] HTTPS authentication encrypts username and password combinations as part of a Uniform Resource Locator address. To obtain an HTTPS connection, a web browser must contact a trusted, commercial Certificate Authority, such as a NAESB Authorized Certificate Authority, to obtain the web server's public key, and follow other applicable HTTPS procedures.

[15] HTTP is the original communications protocol of the internet which enables a web browser to depict text, pictures, shapes, live data, and click targets on a web browser. However, username and password combinations are not encrypted in HTTP basic authentication.

[16] In order for a Service Requester to have control over its segmented nomination(s), the Transportation Service Provider (TSP) will require a ''Capacity Block ID'' to be submitted with each nomination line item specifying a Transaction Type of ''Segmented.''

c. Revisions Impacting Multiple Standards

16. NAESB revised multiple standards [17] and data sets [18] to remove references to the term ''gigacalories'' and add the term ''gigajoules,'' consistent with the standard quantity for nominations, confirmations, and scheduling in Mexico.

d. Other Material in NAESB's Report

17. NAESB revised multiple data sets which impacted technical implementation documentation only.

18. Further, NAESB revised its optional model contracts and corresponding Mexican and Canadian Addendums to reflect a standard digital representation of natural gas trade events. NAESB states that these revisions are intended to capitalize on smart contracts and distributed ledger technologies.

*B. Standards Proposed Not To Be Incorporated by Reference*

19. We propose to continue our past practice [19] of not incorporating by reference into our regulations any optional model contracts because we do not require the use of these contracts and therefore we do not need to include them in our regulations.[20] In addition, consistent with our findings in past proceedings, we are not proposing to incorporate by reference the Wholesale Electric Quadrant/WGQ eTariff Related Standards because the Commission adopted and posted its standards and protocols for electronic tariff filings.[21]

*C. Proposed Implementation Procedures*

20. We propose to continue the compliance filing requirements as revised in Order No. 587–V.[22] We propose that compliance filings made in accordance with a final rule be made 120 days after issuance of a final rule in this proceeding or on the first business day thereafter if falling on a weekend or holiday, with an effective date 180 days from the date compliance filings are due in this proceeding or the first business day thereafter if falling on a weekend or holiday. As the Commission found in Order No. 587–V, adoption of the revised compliance filing requirements increases the transparency of the interstate natural gas pipelines' incorporation by reference of the NAESB WGQ Standards so that shippers and the Commission will know which tariff provision(s) implements each standard as well as the status of each standard.[23]

21. Consistent with our practice since Order No. 587–V, each pipeline must designate a single tariff section under which every NAESB WGQ Standard incorporated by reference by the Commission is listed.[24] For each standard, the pipeline must specify in the tariff section or tariff sheet(s) listing all the NAESB standards:

(a) Whether the standard is incorporated by reference;

(b) For those standards not incorporated by reference, the tariff provision that complies with the standard; or

(c) For those standards with which the pipeline does not comply, an explanatory statement, including an indication of whether the pipeline has been granted a waiver, extension of time, or other variance with respect to compliance with the standard.[25]

Likewise, consistent with past practice, we will post on our eLibrary website (under Docket No. RM96–1–042) a sample tariff format, to provide filers an illustrative example to aid them in preparing their compliance filings.

22. Consistent with our policy since Order No. 587–V,[26] we propose that requests for waivers that do not meet the requirements set forth in Order No. 587–V will not be granted. In particular, as we explained in Order No. 587–V, waivers are unnecessary and will not be granted when the standard applies only on condition the pipeline performs a business function and the pipeline currently does not perform that function.[27]

23. If the pipeline is requesting a continuation of an existing waiver or extension of time, it must include a table in its transmittal letter that identifies the standard for which the Commission granted a waiver or extension of time, and the docket number or order citation to the proceeding in which the Commission granted the waiver or extension of time. The pipeline also must present an explanation for why such waiver or extension of time should remain in force with regard to the WGQ Version 3.2 Standards.

24. This continues our practice of having pipelines include in their tariffs a common location that identifies the way in which the pipeline is incorporating all the NAESB WGQ Standards and the standards with which it is required to comply.

## III. Notice of Use of Voluntary Consensus Standards

25. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, we are proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

## IV. Incorporation by Reference

26. The Office of the Federal Register requires agencies proposing to incorporate material by reference to discuss the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.[28] The regulations also require agencies to summarize, in the preamble of the final rule, the material that it incorporates by reference. The standards we are proposing to incorporate by reference consist of seven suites of NAESB WGQ Business Practice Standards that address a variety of topics and are designed to streamline the transactional processes for the wholesale natural gas industry by promoting a more competitive and efficient market. These include the: WGQ Additional Business Practice Standards; WGQ Nominations Related Business Practice Standards; WGQ Flowing Gas Related Business Practice Standards; WGQ Invoicing Related Business Practice Standards; Quadrant Electronic Delivery Mechanism Related Business Practice Standards; Capacity Release Related Business Practice Standards; and Internet Electronic Transport Related Business Practice

[17] NAESB WGQ Version 3.2 Standards 1.3.14, 1.3.15, 1.3.82, and 3.3.3.

[18] NAESB WGQ Version 3.2 Standards 0.4.1 through 0.4.3, 1.4.1, 1.4.3 through 1.4.6, 2.4.1, 2.4.6, 2.4.17, 3.4.1, 3.4.2, 5.4.24 through 5.4.26.

[19] *See, e.g., Standards for Bus. Practices of Interstate Nat. Gas Pipelines,* Notice of Proposed Rulemaking, 83 FR 44521 (Aug. 31, 2018), 164 FERC ¶ 61,125, at P 16 (2018) (*WGQ Version 3.1 NOPR*).

[20] *Id., Standards for Bus. Practices of Interstate Nat. Gas Pipelines,* Order. No. 587–V, 77 FR 43711 (Jul. 26, 2012), 140 FERC ¶ 61,036, at n.11 (2012).

[21] *WGQ Version 3.1 NOPR,* 164 FERC ¶ 61,125 at P 16; *Elec. Tariff Filings,* Order No. 714, 73 FR 57515 (Oct. 3, 2008), 124 FERC ¶ 61,270 (2008).

[22] Order No. 587–V, 140 FERC ¶ 61,036 at PP 36–39.

[23] *Trans-Union Interstate Pipeline L.P.,* 141 FERC ¶ 61,167, at P 36 (2012) (Order No. 587–V Compliance Order).

[24] *Id.* P 36; *WGQ Version 3.1 NOPR,* 164 FERC ¶ 61,125 at P 18.

[25] Shippers can use the Commission's electronic tariff system to locate the tariff record containing the NAESB standards, which will indicate the docket in which any waiver or extension of time was granted.

[26] Order No. 587–V, 140 FERC ¶ 61,036.

[27] Order No. 587–V Compliance Order, 141 FERC ¶ 61,167 at PP 4, 38.

[28] 1 CFR 51.5 (2020). *See* Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014).

Standards. We summarize these standards below.

27. *The WGQ Additional Business Practice Standards address six areas:* Creditworthiness; Storage Information; Gas/Electric Operational Communications; Operational Capacity; Unsubscribed Capacity; and Location Data Download.

- The Creditworthiness related standards describe requirements for the exchange of information, notification, and communication between parties during the creditworthiness evaluation process.
- The Storage Information related standards define the information to be provided to natural gas service requesters related to storage activities and/or balances.
- The Gas/Electric Operational Communications related standards define communication protocols intended to improve coordination between the gas and electric industries in daily operational communications between transportation service providers and gas-fired power plants. The standards include requirements for communicating anticipated power generation fuel for the upcoming day as well as any operating problems that might hinder gas-fired power plants from receiving contractual gas quantities.
- The Operational Capacity related standards define requirements of the transportation service provider related to the reporting and requesting of a transportation service provider's operational capacity, total scheduled quantity, and operationally available capacity.
- The Unsubscribed Capacity related standards define requirements of the transportation service provider related to the reporting and requesting of a transportation service provider's available unsubscribed capacity.
- The Location Data Download related standards define requirements for the use of codes assigned by the transportation service provider for locations and common codes for parties communicating electronically.

28. The WGQ Nominations Related Business Practice Standards define the process by which a natural gas service requester with a natural gas transportation contract nominates (or requests) service from a pipeline or a transportation service provider for the delivery of natural gas.

29. *The WGQ Flowing Gas Related Business Practice Standards* define the business processes related to the communication of entitlement rights of flowing gas at a location, of the entitlement rights on a contractual basis, of the management of imbalances, and of the measurement and gas quality information of the actual flow of gas.

30. *The WGQ Invoicing Related Business Practice Standards* define the process for the communication of charges for services rendered (Invoice), communication of details about funds rendered in payment for services rendered (Payment Remittance), and communication of the financial status of a customer's account (Statement of Account).

31. *The Quadrant Electronic Delivery Mechanism Related Business Practice Standards* define the framework for the electronic dissemination and communication of information between parties in the North American wholesale gas marketplace for Electronic Data Interchange/EDM transfers, batch flat file/EDM transfers, informational postings websites, Electronic Bulletin Boards/EDM, and interactive flat file/EDM.

32. *The Capacity Release Related Business Practice Standards* define the business processes for communication of information related to the selling of all or any portion of a transmission service requester's contract rights.

33. *The Internet Electronic Transport Related Business Practice Standards* define the implementation of various technologies necessary to communicate transactions and other electronic data using standard protocols for electronic commerce over the internet between trading partners.

34. Our regulations provide that copies of the standards incorporated by reference may be obtained from NAESB at *https://www.naesb.org//* or (713) 356–0060. Copies of the standards may be inspected at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE, Washington, DC 20426, Phone: (202) 502–8371, *https://www.ferc.gov/.* However, at this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

35. NAESB is a private consensus standards developer that develops voluntary wholesale and retail standards related to the energy industry. The procedures used by NAESB make its standards reasonably available to those affected by Commission regulations, which generally is comprised of entities that have the means to acquire the information they need to effectively participate in Commission proceedings. Participants can join NAESB, for an annual membership cost of $8,000, which entitles them to full participation in NAESB and enables them to obtain these standards at no additional cost. Non-members may obtain the Individual Standards Manual or Booklets for each of the seven Manuals by email for $250 per manual, which in the case of these standards would total $1,750. Non-members also may obtain the complete set of Standards Manuals, Booklets, and Contracts on USB flash drive for $2,000. NAESB also provides a free electronic read-only version of the standards for a three-business day period or, in the case of a regulatory comment period, through the end of the comment period. In addition, NAESB considers requests for waivers of the charges on a case-by-case basis depending on need.

## V. Information Collection Statement

36. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (information collection) imposed by an agency.[29] Therefore, we are submitting our proposed information collection to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collection of information displays a valid OMB control number.

37. We solicit comments on our need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

38. *Public Reporting Burden:* The Commission's burden estimates for the proposals in this NOPR are for one-time implementation of the information collection requirements of this NOPR (including tariff filing, documentation of the process and procedures, and information technology work).

39. The collections of information related to this NOPR fall under FERC–545 (Gas Pipeline Rates: Rate Change (Non-Formal))[30] and FERC–549C (Standards for Business Practices of

[29] 5 CFR 1320.11 (2020).

[30] FERC–545 covers rate change filings made by natural gas pipelines, including tariff changes.

Interstate Natural Gas Pipelines).[31] The following estimates of reporting burden are related only to this NOPR and anticipate the costs to pipelines for compliance with our proposals in this NOPR. The burden estimates are primarily related to implementing these standards and regulations and will not result in ongoing costs.

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[Standards for Business Practices of Interstate Natural Gas Pipelines]

| | Number of respondents[32] (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden hr. per response (4) | Total annual burden hours & total annual cost[33] (3) * (4) = (5) | Annual costs per respondent ($) (5) / (1) = (6) |
|---|---|---|---|---|---|---|
| FERC–545 (one-time) | 178 | 1 | 178 | 10 hrs.; $1,010 | 1,780 hrs.; $179,780 | $1,010 |
| FERC–549C (one-time) | 178 | 1 | 178 | 100 hrs.; $10,100 | 17,800 hrs.; $1,797,800 | $10,100 |
| Total | | | 356 | | 19,580 hrs.; $1,977,580 | |

The one-time burden (for both the FERC–545 and FERC–549C) will take place in Year 1 and will be averaged over three years:

FERC–545: 1,780 hours ÷ 3 = 593 hours/year over three years

FERC–549C: 17,800 hours ÷ 3 = 5,933 hours/year over three years

The number of responses is also averaged over three years (for both the FERC–545 and FERC–549C):

FERC–545: 178 responses ÷ 3 = 59 responses/year

FERC–549C: 178 responses ÷ 3 = 59 responses/year

The responses and burden for Years 1–3 will total respectively as follows:

Year 1: 59 responses; 593 hours (FERC–545); 5,933 hours (FERC–549C)

Year 2: 59 responses; 593 hours (FERC–545); 5,933 hours (FERC–549C)

Year 3: 59 responses; 593 hours (FERC–545); 5,933 hours (FERC–549C)

*Title:* FERC–545, Gas Pipeline Rates: Rates Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

*Action:* Proposed information collections.

*OMB Control Nos.:* 1902–0154 (FERC–545), 1902–0174 (FERC–549C).

*Respondents:* Business or other for profit (*e.g.,* Natural Gas Pipelines, applicable to only a few small businesses).

*Frequency of Responses:* One-time implementation (related to business procedures, capital/start-up).

*Necessity of Information:* In response to the recommendations in the Sandia report, the proposals in this NOPR would, if implemented, upgrade current business practices and communication standards by updating the Quadrant EDM Related Standards and IET Related Standards to specifically: (1) Require the implementation of fixes or patches for known vulnerabilities as soon as reasonably practicable in coordination with other trading partners; (2) specify notification timelines to provide notice to trading partners of any systems or software that have not been updated and the potential impact of using the vulnerable system; (3) include both specific and broad adoptions of system security measures and specific notification and coordination during outages with affected trading partners; (4) maintain a minimum encryption strength of 128 bits, (5) specify that OpenPGP should be used to create public and private keys for privacy and digital signature applications; (6) specify HTTPS whenever secure communication is required to protect information in transit and support overall privacy needs; (7) use the largest feasible key length consistent with implementation of current business processes; (8) state that secure websites should employ individual user credentials; and (9) encourage security assessments and coordination between customers, vendors, and trading partners.

40. Further, in response to industry requests or through the normal course of WGQ activities, the proposals in this NOPR would, if implemented, upgrade current business practices and communication standards by specifically: (1) Updating the Nominations Related Standards to allow a Service Requester to determine which rights of the contract its segmentation nomination is using; (2) updating the Quadrant EDM Related Standards to (i) define a NAESB standard time frame for information to be retained on a pipeline's Informational Postings website, (ii) allow for processing functions at the line item level on Customer Activities websites and allow for the use of icons and/or graphical control elements for navigation and/or processing functions, and (iii) make minor revisions designed to add clarity, update the minimum technical characteristics to account for changes in technology since the previous version (Version 3.1) of the WGQ standards, and update the minimum and suggested operating systems and web browsers that entities should support; (3) updating multiple sets of standards to remove references to the term ''gigacalories'' and add the term ''gigajoules'' as the standard quantity for nominations, confirmations, and scheduling in Mexico; and (4) revising the NAESB WGQ data sets or other technical implementation documentation while not resulting in modifications to the underlying business practice standards. The package of standards also includes minor corrections. The implementation of these data requirements will provide additional transparency to Informational Postings websites and will improve communication standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the natural gas industries' operations thereby helping the Commission to carry out its responsibilities under the NGA. In

[31] FERC–549C covers Standards for Business Practices of Interstate Natural Gas Pipelines.

[32] The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

[33] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2019 posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*) and scaled to reflect benefits using the relative importance of employer costs for employee compensation from June 2020 (available at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

Computer and Information Systems Manager (Occupation Code: 11–3021), $101.58.

Computer and Information Analysts (Occupation Code: 15–1120(1221), $87.42.

Electrical Engineer (Occupation Code: 17–2071), $70.19.

Legal (Occupation Code: 23–0000), $142.65.

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is $100.50. We round it to $101/hour.

addition, the Commission's Office of Enforcement will use the data for general industry oversight.

*Internal Review:* We have reviewed the requirements pertaining to business practices of interstate natural gas pipelines and made a preliminary determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. These requirements conform to our plan for efficient information collection, communication, and management within the natural gas pipeline industries. We determined through our internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

41. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov,* telephone: (202) 502–8663, fax: (202) 273–0873.

42. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, telephone: (202) 395–0710; fax: (202) 395–4718].

## VI. Environmental Analysis

43. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[34] The actions that we propose to take here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[35] Therefore, an environmental review is unnecessary and has not been prepared as part of this NOPR.

## VII. Regulatory Flexibility Act

44. The Regulatory Flexibility Act of 1980 (RFA)[36] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

45. Approximately 178 interstate natural gas pipelines, both large and small, are potential respondents subject to the requirements adopted by this rule. Most of the natural gas pipelines regulated by the Commission do not fall within the RFA's definition of a small entity,[37] which is currently defined for natural gas pipelines as a company that, in combination with its affiliates, has total annual receipts of $30 million or less.[38] For the year 2019, only 11 companies not affiliated with larger companies had annual revenues in combination with its affiliates of $30 million or less and therefore could be considered a small entity under the RFA. This represents about six percent of the total universe of potential respondents that may have a significant burden imposed on them. We estimate that the one-time implementation cost of the proposals in this NOPR is $1,977,580 (or $11,110 per entity, regardless of entity size).[39] We do not consider the estimated $11,110 impact per entity to be significant. Moreover, these requirements are designed to benefit all customers, including small businesses that must comply with them. Further, as noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

46. Accordingly, pursuant to section 605(b) of the RFA,[40] the regulations proposed herein should not have a significant economic impact on a substantial number of small entities.

## VIII. Comment Procedures

47. We invite interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 19, 2021. Comments must refer to Docket No. RM96–1–042, and must include the commenter's name, the organization they represent (if applicable), and their address in their comments.

48. We encourage comments to be filed electronically via the eFiling link on the Commission's website at *https://www.ferc.gov/.* We accept most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

49. Commenters that are not able to file comments electronically may mail or hand-deliver an original of their comments. Mailed comments should be addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

50. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## IX. Document Availability

51. In addition to publishing the full text of this document in the **Federal Register**, we provide all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov/*). At this time, we have suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

52. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading.

[34] *Regulations Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[35] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27) (2020).

[36] 5 U.S.C. 601–612.

[37] *See* 5 U.S.C. 601(3) citing section 3 of the Small Business Act (SBA), 15 U.S.C. 623. Section 3 of the SBA defines a ''small business concern'' as a business which is independently owned and operated, and which is not dominant in its field of operation (2019).

[38] 13 CFR 121.201 (Subsector 486-Pipeline Transportation; North American Industry Classification System code 486210; Pipeline Transportation of Natural Gas) (2020). ''Annual Receipts'' are total income plus cost of goods sold.

[39] This number is derived by dividing the total cost figure by the number of respondents. $1,977,580/178 = $11,110.

[40] 5 U.S.C. 605(b).

To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

53. User assistance is available for eLibrary and our website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

**List of Subjects in 18 CFR Part 284**

Natural gas.

By direction of the Commission.

Issued: February 18, 2021.

**Kimberly D. Bose,**

*Secretary.*

In consideration of the foregoing, we propose to amend part 284, chapter I, title 18, Code of Federal Regulations, as follows.

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. In § 284.12, revise paragraphs (a)(1) and (2) to read as follows:

**§ 284.12 Standards for pipeline business operations and communications.**

(a) *Incorporation by reference of NAESB standards.* (1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the business practices and electronic communications standards as promulgated by the North American Energy Standards Board, as incorporated by reference in paragraphs (a)(1)(i) through (vii) of this section.

(i) Additional Standards (Version 3.2, August 15, 2020);

(ii) Nominations Related Standards (Version 3.2, August 15, 2020);

(iii) Flowing Gas Related Standards (Version 3.2, August 15, 2020);

(iv) Invoicing Related Standards (Version 3.2, August 15, 2020);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 3.2, August 15, 2020);

(vi) Capacity Release Related Standards (Version 3.2, August 15, 2020); and

(vii) internet Electronic Transport Related Standards (Version 3.2, August 15, 2020).

(2) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, *Phone:* (713) 356–0060. NAESB's website is at *https://www.naesb.org/.* Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE, Washington, DC 20426, *Phone:* (202) 502–8371, *https://www.ferc.gov/,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

[FR Doc. 2021–03797 Filed 3–4–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–111950–20]**

**RIN 1545–BP91**

## Guidance on Passive Foreign Investment Companies and the Treatment of Qualified Improvement Property Under the Alternative Depreciation System for Purposes of Sections 250(b) and 951A(d); Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking (REG–111950–20) that was published in the **Federal Register** on January 15, 2021. The proposed regulations regarding the determination of whether a foreign corporation is treated as a passive foreign investment company (''PFIC'') for purposes of the Internal Revenue Code (''Code'').

**DATES:** Written or electronic comments and requests for a public hearing are still being accepted and must be received by April 14, 2021.

**ADDRESSES:** Send submissions to Internal Revenue Service, CC: PA: LPD: PR (REG–111950–20), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, persons may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–111950–20).

**FOR FURTHER INFORMATION CONTACT:** Concerning proposed regulations §§ 1.250(b)–1(b)(2) and 1.250(b)–2(e)(2), Lorraine Rodriguez, (202) 317–6726; concerning proposed regulations § 1.951A–3(e)(2), Jorge M. Oben and Larry R. Pounders, (202) 317–6934; concerning proposed regulations §§ 1.1297–0 through 1.1297–2, 1.1298–0 and 1.1298–4, Christina G. Daniels at (202) 317–6934; concerning proposed regulations §§ 1.1297–4 through 1.1297–6 (the PFIC insurance exception), Josephine Firehock at (202) 317–4932; concerning submissions of comments and requests for a public hearing, Regina L. Johnson at (202) 317–5177 (not toll-free numbers) or by sending an email to *publichearings@irs.gov* (preferred).

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed regulations that are the subject of this correction are under sections 1297 and 1298 of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed regulations REG–111950–20 contains errors that needs to be corrected.

### Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–111950–20) that was the subject of FR Doc. 2020–27003, published at 86 FR 4582 (January 15, 2021), is corrected to read as follows:

1. On page 4589, the first column, the twelfth line from the bottom of the last full paragraph, the language ''corporation)'' is corrected to read ''corporation'').

2. On page 4592, the second column, the tenth line from the top of the first partial paragraph, the language ''interests'' is corrected to read ''interests,''.

**§ 1.1297–1 [Corrected]**

■ 3. On page 4603, the first column, in § 1.1297–1, the second line and fourth line from the bottom of paragraph (c)(2)(ii)(A), the language ''(I)'' is corrected to read''(*1*); and ''(II)'' is corrected to read ''(*2*)''.

**§ 1.1297–4 [Corrected]**

■ 4. On page 4605, the third column, in § 1.1297–4, the second line from the bottom of paragraph (f)(6)(i), the language ''statement'' is corrected to read ''statement,''.

■ 5. On page 4605, the third column, in § 1.1297–4, the seventh line from the bottom of paragraph (f)(6)(ii), the language ''IFRS'' is corrected to read ''IFRS,''.

■ 6. On page 4605, the third column, in § 1.1297–4, the third line from the bottom of paragraph (f)(6)(iii), the language ''IFRS'' is corrected to read ''IFRS,''.

**§ 1.1297–5 [Corrected]**

■ 7. On page 4606, the third column, in § 1.1297–5, the third line from the bottom of paragraph (c)(2)(I)(E), the language ''timeline'' is corrected to read ''timeline,''.

■ 8. On page 4607, the third column, in § 1.1297–5, the fifth line from the top of paragraph (f)(3), the language ''reserves'' is corrected to read ''reserves,''.

■ 9. On page 4607, in the third column, in § 1.1297–5, the fourth line from the top of the first partial paragraph (f)(4), the language ''management'' is corrected to read ''management,''.

■ 10. On page 4607, the third column, in § 1.1297–5, the second line from the bottom of paragraph (f)(5), the language ''annuity'' is corrected to read ''annuity,''.

■ 11. On page 4607, the third column, in § 1.1297–5, the second line from the top of paragraph (f)(7), the language ''marketing'' is corrected to read ''marketing,''.

**Crystal Pemberton,**

*Senior Federal Register Liaison, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2021–04542 Filed 3–4–21; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2021–0083]**

**RIN 1625–AA00**

## Safety Zone; Fincantieri Blasting Project; Menominee River, Menominee, MI and Marinette, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Menominee River in Marinette, WI within 1000 feet of a blasting area. This action is necessary to provide for the safety of life on these navigable waters during the daily blasting at the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. This proposed rulemaking would restrict usage by persons and vessels within the safety zone. At no time during the effective period may vessels or person pass between the construction barges and southern bank of Menominee River. Also during the entire effective period, vessels are prohibit from transiting the safety zone at speeds that would create a wake. Additionally, during blasting operations, lasting approximately 15 minutes each evening, no person or vessel may enter the safety zone. These restrictions would apply to all vessels during the effective period unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 22, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0083 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On February 26, 2021, Roen Salvage Company notified the Coast Guard that it will be conducting daily blasting operations beginning April 1, 2021 to November 30, 2021, for an approximate 15 minute period occurring between 3:30 to 5:30 p.m. in conjunction with a construction project. The blasting will take place on the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. The Captain of the Port Sector Lake Michigan (COTP) has determined that potential hazards associated with the blasting would be a safety concern for anyone within a 1000 foot radius of the blasting site.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-foot radius of the blasting site before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).]

The Coast Guard is issuing this temporary rule with an abridged notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not undertaking a thirty-day comment period with respect to this rule because the Coast Guard received details of these operations with insufficient time remaining to undergo a full thirty-day comment period. While it is impracticable to undergo a full thirty-day comment period and still protect the public from the hazards associated with these operations, the Coast Guard invites comments for the next fifteen days.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the same reason stated above—immediate action is needed to respond to the potential safety hazards associated with the daily blasting.

### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone lasting from April 1, 2021 to November 30, 2021 for an approximate 15 minute period occurring daily between 3:30 to 5:30 p.m. The safety zone would cover all navigable waters within 1000 foot radius of the blasting site which will be on the southern bank of the Menominee River at the Fincantieri Ship Yard in Marinette, WI. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily blasting event. No vessel or person would be permitted to enter the safety zone during blasting operations. During non-blasting times, no vessels would be permitted to transit the area at speeds that would create a wake. Additionally, no vessels would be permitted to transit between the

construction barges and the southern bank of the Menominee River. No vessels or person would be allowed to conduct the three preceeding activities without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this proposed rule will relatively small and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of the Menominee River in Marinette, WI, and it is not anticipated to exceed 15 minutes in duration each day. During non-blasting operation vessels would be allowed to enter the safety zone at speeds that do not create a wake. Additionally, the exclusion area between the construction barges and southern bank of the river is small and allows for plenty of space within the channel for vessels to transit the area north of the construction barges. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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 proposed 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone that would prohibit vessels from passing through a small area located between the construction barges and the southern bank of the Menominee River, would prohibit entry into the all navigable waters within a 1000 foot radius of the construction barges for a maximum of 15 minutes per day during blasting activities, and would prohibit vessels from transiting the safety zone at speeds that would create a wake. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to call or email 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.

**V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T09–0083 to read as follows:

**§ 165.T09–0035 Safety Zone; Blasting Project; Menominee River, Marinette, WI.**

(a) *Location.* All navigable waters of the Menominee River within 1000 feet of the blast area on the southern bank of the river at coordinates 43.0705000°N, 086.2346667°.

(b) *Enforcement Period.* The safety zone portion of the regulated area described in paragraph (a) of this section is effective for 15 minutes between 3:30 p.m. and 5:30 p.m. each evening from April 1 to November 30, 2021. The part of the safety zone between the construction barges and the southern bank of the river, and the no-wake zone portion of the regulated area described in paragraph (a) of this section will be in effect continuously from April 1 to November 30, 2021.

(c) *Regulations.*

(1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during blasting operations, or at speeds that would create a wake, must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: March 1, 2021.

**D.P. Montoro,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2021–04553 Filed 3–4–21; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR –2021–0134; FRL–10020–93-Region 9]**

## Air Plan Approval; Arizona; Pinal County Air Quality Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Pinal County Air Quality Control District (PCAQCD or District) portion of the Arizona State Implementation Plan (SIP). These revisions concern the District's negative declarations for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards'') in the portion of the Phoenix-Mesa ozone nonattainment area under the jurisdiction of the PCAQCD and two volatile organic compound (VOC) rules covering gasoline dispensing and surface coating operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0134 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

*https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4216 or by email at *Law.Nicole@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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## I. The State's Submittal

### *A. What documents did the State submit?*

Table 1 lists the documents addressed by this proposal with the dates that they were amended by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED DOCUMENTS

| Local agency | Rule title | Amended | Submitted |
|---|---|---|---|
| PCAQCD | Reasonably Available Control Technology (RACT) Analysis, Negative Declaration and Rules Adoption—Appendix B: Additional Negative Declarations. | 8/5/2020 | 8/20/2020 |
| PCAQCD | Chapter 5, Article 13 Surface Coating Operations | 8/5/2020 | 8/20/2020 |
| | 5–13–100, ''General'' | | |
| | 5–13–200, ''Definitions'' | | |
| | 5–13–300, ''Standards'' | | |
| | 5–13–400, ''Administrative Requirements'' | | |
| | 5–13–500, ''Monitoring and Records'' | | |
| PCAQCD | Chapter 5, Article 20 Storage and Loading of Gasoline at Gasoline Dispensing Facilities | 8/5/2020 | 8/20/2020 |
| | 5–20–100 ''General'' | | |
| | 5–20–200 ''Definitions'' | | |
| | 5–20–300 ''Standards'' | | |
| | 5–20–400 ''Administrative Requirements'' | | |
| | 5–20–500 ''Monitoring and Records'' | | |

On September 14, 2020, the EPA determined that the submittal for PCAQCD's negative declarations and two rules met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these documents?*

We approved earlier versions of the two rules, Article 13 Surface Coating Operations and Article 20 Storage and Loading of Gasoline at Gasoline Dispensing Facilities, into the SIP on August 9, 2019 (84 FR 39196). The PCAQCD adopted revisions to the SIP-approved version on August 5, 2020, and ADEQ submitted them to us on August 20, 2020. If we take final action to approve the August 5, 2020 versions of the two rules, these versions will replace the previously approved versions of these rules in the SIP.

We approved portions of the RACT SIP and negative declarations on August 9, 2019 (84 FR 39196). The PCAQCD adopted additional negative declarations on August 5, 2020, and ADEQ submitted them to us on August 20, 2020.

### *C. What is the purpose of the submitted documents?*

Emissions of VOCs and oxides of nitrogen ($NO_X$) contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and $NO_X$ emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or $NO_X$. The PCAQCD is subject to this requirement as it regulates the Pinal County portion of the Phoenix-Mesa ozone nonattainment area that is currently designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the PCAQCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or $NO_X$ within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or $NO_X$ is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG. Id. at 12278. It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS. See Id. and 70 FR 71612, 71652 (November 29, 2005). The submitted negative declarations provide PCAQCD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. PCAQCD also adopted and submitted for SIP approval the following two rules.

Chapter 5, Article 13 is a rule that establishes VOC content limits for surface coating operations in the Pinal County portion of the Phoenix-Mesa 8-hour ozone nonattainment area. It contains: Definitions; VOC content limits; various partial exemptions; requirements for coating application

methods, cleanup of application equipment, work practices for the handling, disposal, and storage of VOC containing materials, and emission control systems; and requirements for monitoring, testing, and recordkeeping.

Chapter 5, Article 20 is a rule that establishes limits for VOC emissions from gasoline during storage and loading of gasoline at gasoline dispensing facilities. It contains: Definitions; various exemptions; requirements for vapor recovery equipment, general housekeeping, gasoline storage equipment, and gasoline loading operations; and requirements for monitoring, testing, and recordkeeping.

EPA's technical support documents (TSDs) have more information about the District's negative declarations, rules, and the EPA's evaluations thereof.

## II. The EPA's Evaluation and Action

### *A. How is the EPA evaluating the submitted documents?*

SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or $NO_X$ in ozone nonattainment areas classified as Moderate or above (CAA section 182(b)(2)). The PCAQCD regulates a Moderate ozone nonattainment area (40 CFR 81.303) so the District's rules must implement RACT.

States must submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.[1] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the PCAQCD.

The District's analysis must demonstrate that each major source of VOCs or $NO_X$ in the ozone nonattainment area is covered by a RACT-level rule, or submit a negative declaration that no such sources exist in the part of the nonattainment area that is within the District. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. EPA Office of Air Quality Planning and Standards, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' May 25, 1988 (''the Bluebook,'' revised January 11, 1990).
3. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (''the Little Bluebook'').
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the $NO_X$ Supplement), 57 FR 55620, (November 25, 1992).
5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers.''
6. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).
7. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).

Rules that are submitted for inclusion into the SIP must be enforceable (CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (CAA section 193).

In addition to the documents listed above, guidance and policy documents that we use to evaluate enforceability, stringency, and revision/relaxation requirements include the following:

1. ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,'' EPA–450/R–75–102, November 1975.
2. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' EPA–450/2–78–015, June 1978.
3. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA 453/R–08–003, September 2008.
4. ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' June 1992.
5. Memorandum dated March 17, 2011, from Scott Mathias, Interim Director, Air Quality Policy Division, U.S. EPA to Regional Air Division Directors, Subject: ''Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coatings Categories.''

### *B. Do the documents meet the evaluation criteria?*

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. After reviewing PCAQCD's list of Title V permitted facilities, we have also determined the negative declarations adopted by PCAQCD are correct. The TSDs have more information on our evaluation.

### *C. The EPA's Recommendations to Further Improve the Submitted Rules*

The TSDs include recommendations for the next time the local agency modifies the rules.

### *D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules and negative declarations because they fulfill all relevant requirements. We will accept comments from the public on this proposal until April 5, 2021. If we take final action to approve the submitted rules and negative declarations, our final action will incorporate these rules into the federally enforceable SIP. Our final approval of the submitted rules and negative declarations would correct all of the deficiencies identified in our August 9, 2019 partial approval, partial disapproval and limited approval, limited disapproval of PCAQCD's RACT SIP submittal for the 2008 8-hour ozone NAAQS (84 FR 39196).

## III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the two PCAQCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

[1] 57 FR 13498, 13512 (April 16, 1992).

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 23, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–04387 Filed 3–4–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–R04–OAR–2020–0482; FRL–10019–57–Region 4]**

## Air Plan Approval; TN: Redesignation of the Sumner County 2010 Sulfur Dioxide Unclassifiable Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on September 29, 2020, to redesignate the Sumner County, Tennessee unclassifiable area (hereinafter referred to as the ''Sumner County Area'' or ''Area'') to attainment/unclassifiable for the 2010 1-hour primary sulfur dioxide ($SO_2$) national ambient air quality standard (hereinafter referred to as the ''2010 $SO_2$ 1-hour NAAQS''). EPA now has sufficient information to determine that the Sumner County Area is attaining the 2010 1-hour $SO_2$ NAAQS and, therefore, is proposing to approve the State's request and redesignate the Area to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0482 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009 or via electronic mail at *adams.evan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the national ambient air quality standards (NAAQS). On June 2, 2010, EPA revised the primary $SO_2$ NAAQS, establishing a new 1-hour $SO_2$ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).[1] After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country, pursuant to section 107(d)(1)–(2) of the CAA. For the 2010 1-hour $SO_2$ NAAQS, designations were based on EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. In advance of designating the Sumner County Area, EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Air Division Directors, U.S. EPA Regions 1–10 titled, ''Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard,'' which contained the

[1] On February 25, 2019 (effective April 17, 2019), based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA issued a decision to retain the existing NAAQS for $SO_2$. *See* 84 FR 9866.

factors that EPA evaluated in determining the appropriate designations and associated boundaries when designating the Sumner County Area, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries.[2] [3] The guidance also referenced EPA's non-binding Monitoring Technical Assistance Document (Monitoring TAD) and Modeling Technical Assistance Document (Modeling TAD),[4] which contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling.

EPA completed the first set of initial area designations for the 2010 1-hour $SO_2$ NAAQS in 2013 (Round 1). Pursuant to a March 2, 2015, consent decree and court-ordered schedule,[5] EPA finalized a second set of initial area designations for the 2010 1-hour $SO_2$ NAAQS in 2016 (Round 2). The March 2, 2015, consent decree identified the following emissions criteria such that EPA must designate, in Round 2, an area surrounding any stationary source which had: (a) annual emissions in 2012 exceeding 16,000 tons of $SO_2$, or (b) both an annual average emissions rate of at least 0.45 pounds of $SO_2$ per one million British thermal units, according to EPA's Clean Air Markets Division Database, and annual emissions of at least 2,600 tons of $SO_2$ in 2012. Sumner County, Tennessee contained one source, Tennessee Valley Authority (TVA) Gallatin Fossil Plant (TVA Gallatin), that met these Round 2 criteria. EPA evaluated the Area, using the five factors identified previously, during the Round 2 designations. This evaluation is discussed further in Section III of this notice. TVA Gallatin is located in north-central Tennessee in the southern portion of Sumner County, approximately 5 kilometers (km) southeast of the center of Gallatin, Tennessee. TVA Gallatin is a large Electric Generating Unit that was included in the list of facilities to be designated pursuant to the March 2, 2015, Consent Decree.[6] [7]

EPA's March 20, 2015, guidance specified the designation category definitions to be used in the Round 2 designations. Specifically, EPA defined a ''nonattainment'' area as an area that EPA has determined violates the 2010 1-hour $SO_2$ NAAQS based on the most recent three years of quality-assured, certified ambient air quality monitoring data or an appropriate modeling analysis, or that EPA has determined contributes to a violation in a nearby area; and defined an ''attainment'' area as an area that EPA has determined meets the 2010 1-hour $SO_2$ NAAQS and does not contribute to a violation of the NAAQS in a nearby area based on either: (a) the most recent 3 years of ambient air quality monitoring data from a monitoring network in an area that is sufficient to be compared to the NAAQS per EPA interpretations in the Monitoring TAD, or (b) an appropriate modeling analysis. As discussed further in Section III of this notice, EPA was unable to determine whether the Sumner County Area met the definition of a nonattainment area or the definition of an attainment area based on the available information at the time of the Round 2 designations. As a result, EPA designated the Sumner County Area as unclassifiable in the Round 2 designations published on July 12, 2016.[8] The boundary for this designation was the jurisdictional boundary of Sumner County.

Detailed rationale, analyses, and other information supporting EPA's original Round 2 designation for this Area can be found in the Round 2 designation's technical support document (TSD) for Tennessee. That TSD, along with all other supporting materials for the original 2010 1-hour $SO_2$ NAAQS designation for Sumner County, can be found on EPA's $SO_2$ designations website.[9] In support of this proposed redesignation action, EPA evaluated new modeling for the Sumner County Area provided by Tennessee and developed a new TSD. The TSD for this proposed action is included in the docket.[10]

## II. What are the criteria for redesignating an area from unclassifiable to attainment/unclassifiable?

Section 107(d)(3)(A) of the CAA provides that the Administrator may notify the Governor of any state that the designation of an area should be revised ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' [11] The Act further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor's own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request. In keeping with CAA section 107(d)(3)(A), areas that are redesignated to attainment/unclassifiable [12] must meet the requirements for attainment areas and, thus, must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not meet the NAAQS. See the definitions for nonattainment area, attainment area, and unclassifiable area in CAA section 107(d)(1)(A)(i)–(iii).

In its designations under the 2010 1-hour $SO_2$ NAAQS, EPA has generally defined an attainment/unclassifiable area as an area that, based on available information including (but not limited to) appropriate monitoring data and/or

[2] The 2015 memorandum is available at *https://www.epa.gov/sites/production/files/2016-04/documents/20150320so2designations.pdf.*

[3] This designation guidance has since been supplemented by a July 22, 2016, designation guidance memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10. The 2016 memorandum is available at *https://www.epa.gov/sites/production/files/2016-07/documents/areadesign.pdf.*

[4] ''Sulfur Dioxide ($SO_2$) National Ambient Air Quality Standards Designations Modeling Technical Assistance Document,'' August 2016 draft, available at *https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf.* EPA released earlier drafts of this document in May 2013 and February 2016.

[5] *See Sierra Club et. al.* v. *McCarthy,* Civil Action No. 3:13–cv–3953–SI (N.D. Cal.), and 79 FR 31325 (June 2, 2014).

[6] TVA Gallatin was also subject to EPA's 2015 Data Requirements Rule (DRR) for the 2010 $SO_2$ 1-hour NAAQS. *See https://www.epa.gov/sites/production/files/2016-06/documents/tn.pdf* for Tennessee's letter dated January 15, 2016 with the Data Requirements Rule (DRR) source list.

[7] In accordance with the DRR, 40 CFR part 51, subpart BB, through a letter dated June 7, 2016, Tennessee notified EPA that the State chose to characterize peak 1-hour $SO_2$ concentrations for TVA Gallatin using air quality dispersion modeling.

[8] *See* 81 FR 45039 (July 12, 2016), codified at 40 CFR 81.343.

[9] EPA $SO_2$ designations website can be found at *https://www.epa.gov/sulfur-dioxide-designations.*

[10] The modeling files are not included in the electronic docket for this proposed action due to their nature, size, and incompatibility with the Federal Docket Management System. These files are available at the EPA Region 4 office for review. To request these files, please contact the person listed in the notice under the section titled **FOR FURTHER INFORMATION CONTACT**.

[11] While CAA section 107(d)(3)(E) also lists specific requirements for redesignations, those requirements only apply to redesignations of nonattainment areas to attainment and, therefore, are not applicable in the context of a redesignation of an area from unclassifiable to attainment/unclassifiable.

[12] Historically, EPA has designated most areas that do not meet the definition of nonattainment as ''unclassifiable/attainment.'' EPA has reversed the order of the label to be ''attainment/unclassifiable'' to better convey the definition of the designation category and so that the category is more easily distinguished from the separate unclassifiable category. *See* 83 FR 1098 (January 9, 2018) and 83 FR 25776 (June 4, 2018). EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

modeling analyses, EPA has determined meets the NAAQS and determined that the available information indicates that the area does not likely contribute to ambient air quality in a nearby area that does not meet the NAAQS. EPA is proposing to find that the Sumner County Area now meets the definition of attainment/unclassifiable based upon air quality dispersion modeling analyses that demonstrates attainment, *i.e.,* no violations of the 2010 1-hour $SO_2$ NAAQS and not contributing to a nearby area that is not meeting the NAAQS. EPA preliminarily finds this information sufficient for the purposes of redesignating an area from unclassifiable to attainment/unclassifiable. Such redesignations are functionally similar to initial designations and are not subject to CAA section 107(d)(3)(E), which, amongst other things, requires attainment to be due to permanent and enforceable measures and which requires a demonstration that the area will maintain the NAAQS for 10 years.

## III. What is EPA's rationale for proposing to redesignate the area?

The Sumner County Area was designated unclassifiable by EPA on July 12, 2016. EPA's rationale for the unclassifiable designation is fully explained in the TSD associated with that action.[13] As discussed in the final TSD, the revised modeling provided by Tennessee in March 2016 for the final designation action used allowable $SO_2$ emissions rates from the TVA Gallatin facility that had not yet been made federally enforceable. Additionally, the final modeling analysis did not appropriately account for background $SO_2$ concentrations in the Area which was considered inconsistent with EPA's Modeling TAD and modeling guidelines in 40 CFR part 51, Appendix W.

Tennessee submitted an updated modeling analysis with its letter signed by Michelle Owenby, Director of TDEC's Division of Air Pollution Control, on September 29, 2020, requesting that EPA redesignate Sumner County, Tennessee, to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.[14] This updated modeling was performed using the current version of EPA's recommended dispersion model, AERMOD version 19191, with the most recent three years of actual $SO_2$ emissions (2017–2019) from the TVA Gallatin facility and concurrent meteorology data. Additionally, the updated modeling used recent 2016 land cover data and appropriately accounted for background $SO_2$ concentrations in the Area. The TSD included in the docket for this proposed redesignation action provides a detailed summary of Tennessee's modeling analysis and EPA's evaluation of the modeling.

According to EPA's guidance on redesignations, $SO_2$ nonattainment areas using modeling to demonstrate attainment for a redesignation request are expected to use maximum allowable emissions.[15] However, this statement derives from the requirements of CAA section 107(d)(3)(E), which applies only to the redesignation of nonattainment areas to attainment. For redesignations of unclassifiable areas, the necessary analysis is equivalent to what would be required in a designation in the first instance since EPA has not found the area to be attainment or nonattainment. In this first instance, the goal is to characterize existing ambient air quality. As such, it is appropriate to use actual emissions for estimating existing air quality. EPA's acceptance of modeling using actual emissions in this instance should not be construed to define what would be needed for a demonstration of attainment and maintenance for purposes of a redesignation of a nonattainment area to attainment.

After reviewing Tennessee's request under CAA section 107(d)(3)(D) and all available information, EPA is proposing to find that the modeling provided by the State comports with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. The State's modeling indicates that the predicted maximum design value at any receptor in the modeling domain is 60.5 micrograms per cubic meter (μg/m$^3$), or 23.1 ppb.[16] EPA's review confirms that the modeling results appropriately characterize the air quality in the Sumner County Area that predicted ambient $SO_2$ concentrations are below the 2010 1-hour $SO_2$ NAAQS of 196.4 μg/m$^3$, or 75 ppb.[17] Additionally, there is no evidence of monitored or modeled violations in the surrounding counties such that the source is contributing to any nearby area that does not meet the NAAQS. EPA is therefore proposing to approve Tennessee's redesignation request and proposing to redesignate the entirety of Sumner County that was designated as unclassifiable in July 2016 to attainment/unclassifiable based on the currently available information that demonstrates attainment of the 2010 1-hour $SO_2$ NAAQS.

## IV. Proposed Action

EPA is proposing to approve Tennessee's September 29, 2020, redesignation request and to redesignate the Sumner County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS. EPA has reviewed the modeling provided by the State with its redesignation request and preliminarily finds that it complies with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. If finalized, approval of the redesignation request would change the legal designation, found at 40 CFR part 81, of Sumner County from unclassifiable to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.

## V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not create any new requirements. Accordingly, this proposed action merely proposes to redesignate an area to attainment/unclassifiable and does not impose additional requirements. For that reason, this proposed action:

[13] The final Round 2 designations TSD can be found at *https://www.epa.gov/sites/production/files/2016-07/documents/r4_tn_final_designation_tsd_06302016.pdf.*

[14] The demonstration of attainment through air quality dispersion modeling requires an area to review and report annual $SO_2$ emissions pursuant to DRR ongoing verification at 40 CFR 51.1205(b). In its September 29, 2020, redesignation request letter, Tennessee also requested to terminate the section 51.1205(b) annual reporting requirement because the modeling analyses demonstrated a value of at least 50 percent below the 2010 1-hour $SO_2$ NAAQS at all receptors. EPA will address the annual reporting termination request in a separate action which has no bearing on the proposed approval of the redesignation.

[15] ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions,'' April 2014, at 67, available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf;* ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' November 1993, at 3, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19931130_berry_actual_emissions_ozone_co_maintenance_demos%20.pdf.*

[16] The $SO_2$ NAAQS and the design value compared to the NAAQS is the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

[17] See the TSD in the docket for this proposed action for further information and analysis of the updated modeling.

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control.

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

Dated: February 25, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2021–04406 Filed 3–4–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R09–RCRA–2019–0491; FRL–10019–33–Region 9]**

## California: Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) approved revisions to California's federally authorized hazardous waste program by publishing proposed and final rules in the **Federal Register** on October 18, 2019 and January 14, 2020, respectively. The notice for the proposed rule inadvertently and unintentionally left out citations for approving the State's authority to adopt additional waste streams as universal wastes in the *State Analogues to the Federal Program* table. In addition, the scope of the State program that is considered ''broader in scope'' than the federal program was mis-designated. We are proposing to correct these and related errors. EPA seeks public comment prior to taking final action.

**DATES:** Comments on this proposed correction must be received by April 5, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2019–0491, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission *(i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Laurie Amaro, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3364 or by email at *Amaro.Laurie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Why are corrections to the revised state program authorization necessary?

States that have received final authorization from EPA under the Resource Conservation and Recovery Act (RCRA) § 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. EPA's **Federal Register** notices regarding proposed and final authorization of revisions to state hazardous waste management programs provide the public with an opportunity to comment and also offer details with respect to the scope of the revised program authorizations on which both the general public and the regulated community may rely. Where these notices omit critical information or fail to clearly delineate the scope of authorized program revisions, corrections may be necessary and/or appropriate.

### B. What corrections is EPA making to this rule?

After proposing updates to California's authorized hazardous waste program on October 18, 2019 (80 FR 55871), EPA authorized changes to California's hazardous waste program on January 14, 2020 (85 FR 2038). EPA is now proposing to correct the updated authorization by clarifying that: (1) California is authorized to add federally-regulated hazardous waste streams to its universal waste program and the requirements that California establishes to manage such added waste streams are federally enforceable, whether they are added to California's universal waste program prior to or after EPA's authorization of the State's universal waste program; (2) State universal waste requirements that apply to non-RCRA wastes designated by California as ''hazardous waste,'' also known as ''non-RCRA hazardous waste,'' are beyond the scope of the federal program and are not being authorized; and, similarly, (3) other wastes that are sometimes federally-regulated hazardous waste and sometimes non-RCRA hazardous waste under California law, are part of the federally authorized program, but only insofar as these materials constitute federally-regulated hazardous waste. If these corrections are

finalized, these changes to the scope of California's authorized universal hazardous waste program would become effective.

**C. What happens if EPA receives comments that oppose this proposed action?**

EPA will consider all comments received during the comment period and address them in a final rule. You may not have another opportunity to comment. If you want to comment on the corrections proposed here, you must do so at this time.

**D. What has California previously been authorized for?**

California initially received final authorization for the state hazardous waste management program on July 23, 1992 (57 FR 32726), effective August 1, 1992. EPA granted final authorization for changes to California's program on the following dates: September 26, 2001 (66 FR 49118), effective September 26, 2001 and October 7, 2011 (76 FR 62303), effective October 7, 2011 and January 14, 2020 (85 FR 2038), effective January 14, 2020.

**E. What changes is EPA proposing to authorize with this action?**

EPA proposes to correct and clarify the terms of the January 14, 2020 authorization of California's hazardous waste program with respect to universal waste.

*1. Proposed Changes to the State Analogues to the Federal Program Table*

EPA is recreating in this proposal the *State Analogues to the Federal Program* table that was published in the proposed authorization update **Federal Register** notice at 84 FR 55872 (October 18, 2019). This table is a helpful tool in tracking the elements of the authorized State hazardous waste program.

As an initial matter, EPA is adding citations in the table to reflect the Agency's proposed authorization of California's authority to add waste streams to the State's universal waste program at Title 22 of the California Code of Regulations (CCR) 66260.22 and 66260.23, the federal analogues of which are 40 CFR 260.20(a) and 260.23(a) through (d), respectively. Authorization of these provisions—which were inadvertently omitted from the proposed and final rules authorizing California universal waste program—is critical to EPA's ability to enforce State universal waste program requirements for federally-regulated hazardous wastes that have already been or are added to California's universal waste program in the future. If these proposed corrections to authorize 22 CCR 66260.22 and 66260.23 are finalized, EPA will be empowered to enforce California's universal waste requirements for federally regulated hazardous waste that California has already added or adds to its universal waste program pursuant to these requirements in the future.

Similarly, EPA is adding a footnote to the updated *State Analogues to the Federal Program* table to clarify the implications of the authorization of the State's universal waste program on a waste stream that the State already identified as a universal waste before the universal waste authorization update was effective, *i.e.,* aerosol cans. This footnote clarifies that, while EPA has more recently taken action to identify aerosol cans as universal waste (citing 84 FR 67202, December 9, 2019, effective February 7, 2020), California's previous reliance on 22 CCR 66260.22 and 66260.23 to add such wastes, which are proposed to be authorized in accordance with this correction, would be considered retroactive. Thus, if these corrections are approved, California's universal waste requirements for aerosol cans would be federally enforceable. The Agency believes that these State requirements would have been included in California's universal waste authorization update application, but for the fact that the federal aerosol can universal waste rule was not in effect at the time of the State's July 10, 2019 submittal of its application. Because the Agency is correcting the recent authorization update and is now proposing approval of California's analogous provisions for adding new universal waste streams under 40 CFR 260.20 and 260.23, and because aerosol cans were previously added to California's universal waste program in accordance with its analogues to these provisions, the Agency maintains that the clarifying footnote in this proposal is both helpful and appropriate.

The corrections proposed in this rule, and described above, would require modifications to the *State Analogues to the Federal Program* table published on October 18, 2019 (80 FR 55871), as follows:

STATE ANALOGUES TO THE FEDERAL PROGRAM

| Description of Federal requirement (checklist, if applicable) | **Federal Register** date and page | Analogous State Authority California Code of Regulations (CCR) Title 22, Division 4.5 and Health and Safety Code |
|---|---|---|
| 40 Code of Federal Regulations (CFR) 260.20(a) and 260.23(a) through (d) (Checklist 142 E). | 60 FR 25492, May 11, 1995 | 22 CCR 66260.22, adopted 2003, amended March 15, 2003.<br>22 CCR 66260.23, adopted 2003, amended February 4, 2009. |
| 40 (CFR) part 273, subparts A through G—Standards for Universal Waste [a].<br>Excluding 273.33(a)(3)(iii) and 273.33 (b)(1) through (4) (Checklists 142 A, B, D, E, 176, 181, 209, 215) [b]. | 60 FR 25492, May 11, 1995<br>63 FR 71225, December 24, 1998<br>64 FR 36466, July 6, 1999<br>70 FR 45508, Aug. 5, 2005<br>71 FR 40254, July 14, 2006 [c] | 22 CCR 66273, October 22, 2018.<br>Health & Safety Code 25201.16, October 3, 2001. |

[a] Because several definitions in the state universal waste regulations do not have federal counterparts, the state cited additional federal regulations at 40 CFR 260.1, 260.10, 261.4, 262.81, 264.142 and 270.2 in support of its application for authorization of the State's universal waste program.

[b] Although Checklist 214 is mentioned in the State Attorney General's Statement, EPA is not including it here because the typographical and spelling corrections made in this checklist are not relevant to the State's regulatory language.

[c] *Adding Aerosol Cans to Universal Waste* (84 FR 67202, December 9, 2019, effective February 7, 2020) is not included here because it was not in effect at the time of the State's application. In addition, we are approving the State's analogous provisions for adding waste streams under 40 CFR 260.20 and 260.23, thus the state may add additional waste streams that meet the conditions outlined in 40 CFR 273.81. As a result, California's inclusion of aerosol cans in its universal waste program is also proposed to be authorized. Unlike the authorization of most of RCRA hazardous waste management requirements, the authorization of 22 CCR 66260.22(a) and 66260.23(a) through (d) means that any federally regulated hazardous waste added to California's universal waste program pursuant to these requirements are automatically authorized, regardless of when California adds them.

*2. Proposed Changes to the List of State Provisions Deemed ''Broader in Scope''*

This notice also proposes to correct that part of EPA's California universal waste authorization update that mistakenly identified California's regulation of aerosol cans and other California-listed universal wastes as broader in scope than the federal program. EPA proposes to revise the list of California requirements beyond the scope of the federal program by deleting the following paragraph from the list of State requirements that are broader in scope than the federal program (section G from the October 18, 2019 proposal):

California-only universal wastes. California has added the following non-RCRA waste streams to its universal waste program: Aerosol cans, cathode ray tubes (CRTs), CRT glass and electronic devices.

The inclusion of this language in this section of the 2019 proposal was an inadvertent error. These materials were all previously identified by California as universal hazardous waste in accordance with 22 CCR 66260.22 and 66260.23 and, except for aerosol cans, were all included in California's authorization update application. As a result, similar to aerosol cans, California's regulation of CRTs, CRT glass and electronic devices should be considered within the scope of the authorized California universal waste program.

The Agency is also proposing to correct the list of requirements that are beyond the scope of the federal program to clarify that non-RCRA wastes included in the California universal waste program are broader in scope than the federal program. Thus, where wastes may sometimes be federally regulated (when, for example, they exhibit a characteristic for hazardous waste) but at other times are not federally regulated (where they do not exhibit a characteristic), California is authorized for that part of its universal waste program that covers the federally-regulated portion of the waste stream, but not for that portion of the State program that covers ''non-RCRA hazardous waste'' (*i.e.,* non-federally regulated hazardous waste that California regulates as hazardous waste). For example, electronic waste (e-waste) may sometimes constitute a RCRA hazardous waste, but is always considered a ''non-RCRA hazardous waste'' under California law. EPA is proposing to correct its authorization of California's universal waste program by identifying the non-federally regulated portion of such a universal waste stream as broader in scope than the federal program.

Thus, EPA proposes to add the following language to its analysis of the parts of the California universal waste program that are broader in scope than the federal program:

Non-RCRA wastes. California regulates as hazardous waste some wastes not regulated by EPA under RCRA. These are referred to as ''non-RCRA hazardous waste.'' Any non-RCRA hazardous wastes that a state regulates as a hazardous waste are generally considered beyond the scope of the federal program (broader-in-scope). To the extent that California has included non-RCRA hazardous wastes in the State's universal waste program, regulation of those non-RCRA hazardous wastes as universal waste would be broader in scope than the federal program.

## I. How does this action affect Indian country (18 U.S.C. 1151) in California?

California is not authorized to carry out its hazardous waste program in Indian country within the state. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the federal RCRA program on these lands.

## K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action proposes corrections to the authorization of state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, this action 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 action proposes correction of the authorization of pre-existing requirements under state law 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). As explained above, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects the **Federal Register** notice in which EPA authorized state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not concern environmental health or safety risks that EPA has reason to believe may disproportionally affect children. This proposed correction is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization, as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. See 15 U.S.C. 272 note, sec. 12(d)(3), Public Law 104–113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA's requirement to use VCS if compliance is ''inconsistent with applicable law''). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed correction to its rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed correction to the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This proposed correction to the rule authorizing California's universal waste program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994)

establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this proposed correction to the California universal waste authorization rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and impose no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. The Congressional Review Act, 5 U.S.C. 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. The EPA will submit a report containing this document 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 final rule correction in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed correction is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 26, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–04586 Filed 3–4–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[WT Docket No. 19–250; RM–11849; Report No. 3168; FRS 17410]**

### Petition for Reconsideration of Action in Proceedings

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for Reconsideration.

**SUMMARY:** Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Gerard Lavery Lederer and Nancy L. Werner, on behalf of Local Governments and National Association of Telecommunications Officers and Advisors (''NATOA'').

**DATES:** Oppositions to the Petition must be filed on or before March 22, 2021. Replies to an opposition must be filed on or before March 30, 2021.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Georgios Leris, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–1994.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Report No. 3168, released January 14, 2021. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

*Subject:* Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, published 85 FR 78005, December 3, 2020, in WT Docket No. 19–250 and RM–11849. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–04398 Filed 3–4–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 21–57; RM–11882; DA 21–166; FR ID 17526]**

### Television Broadcasting Services Savannah, Georgia

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Video Division has before it a petition for rulemaking filed November 27, 2020 (Petition) by Gray Television Licensee, LLC (Petitioner), the licensee of WTOC–TV (CBS), channel 11 (WTOC or Station), Savannah, Georgia. The Petitioner requests the substitution of channel 23 for channel 11 at Savannah, Georgia in the DTV Table of Allotments.

In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and also that the ''reception of VHF signals require larger antennas . . . relative to UHF channels.'' According to the Petitioner, ''many of its viewers experience significant difficulty receiving WTOC–TV's signal'' and its channel substitution proposal will allow WTOC ''to deliver a more reliable over-the-air signal to viewers. The Petitioner further states that its channel substitution proposal will result in no loss of service.

We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 23 can be substituted for channel 11 at Savannah, Georgia as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules at coordinates 32–3–15.0 N and 81–21–0.0 W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.

**DATES:** Comments must be filed on or before April 5, 2021 and reply comments on or before April 19, 2021.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 1776 Street NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Andrew Manley, Media Bureau, at (202) 418–0596 or *Andrew.Manley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–57; RM–11882; DA 21–166, adopted February 12, 2021, and released February 12, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

### Proposed Rule

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

## PART 73—RADIO BROADCAST SERVICE

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

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 in paragraph (i) amend the Post-Transition Table of DTV Allotments under Georgia by revising the entry for Savannah to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *

(i) * * *

| Community | Channel No. |
|---|---|
| * * * * * | |
| **Georgia** | |
| * * * * * | |
| Savannah | *9, 22, 23, 39. |
| * * * * * | |

[FR Doc. 2021–04635 Filed 3–4–21; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 86, No. 42

Friday, March 5, 2021

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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Information Collection Request; 30-Day Notice and Request for Comments

**AGENCY:** U.S. Agency for International Development (USAID).

**ACTION:** Notice; request for comments.

**SUMMARY:** U.S. Agency for International Development (USAID), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning whether the proposed collection of information is necessary for sustaining USAID-funded programming; the accuracy of USAID's estimate of the burden of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents.

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** Interested persons are invited to submit comments regarding the proposed information collection to OMB (attention of the USAID Desk Officer);

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Melissa Taylor via email to *meltaylor@usaid.gov;* or by phone 202–712–5307.

**SUPPLEMENTARY INFORMATION:** *Title:* Forms for reporting on contributions to USAID-funded activities by host country governments, non-governmental entities and implementing partners.

*A modern, streamlined and responsive customer experience means:* Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

*Analysis:* USAID will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USAID may also utilize observational techniques to collect this information.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. USAID will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

*Method of Collection:* USAID will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USAID may also utilize observational techniques to collect this information.

*OMB Number:* Not assigned.

*Agency Form No.:* N/A.

*Agency:* U.S. Agency for International Development (USAID).

**Federal Register**: This information was previously published in the **Federal Register** on October, 27th 2020 allowing for a 60-day public comment period under Document #2020–23629. USAID received no comments.

*Affected Public:* Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor or grantee. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

*Number of Respondents:* Varied, depending on the data needed.

*Expiration Date:* Three years from issuance date.

*Frequency:* Varied, dependent upon the data needed.

*Estimated number of hours:* Varied, dependent upon the data collection method used.

**Aubra E. Anthony,**

*Emerging Technology Advisor, Technology Division, Development, Democracy, and Innovation Bureau.*

[FR Doc. 2021–04482 Filed 3–4–21; 8:45 am]

BILLING CODE P

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collections

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Notice of public information collections.

**SUMMARY:** The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval to continue the information collections described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on these collections from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collections to OMB. Comments are requested concerning: (a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 4, 2021.

**ADDRESSES:** You may submit comments by any of the following methods:

1. *Web:* Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.
2. *Email: policymailbox@usaid.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Francisco Escobar, at (202) 916–2614 or via email at *policymailbox@usaid.gov.*

**SUPPLEMENTARY INFORMATION:**

### Instructions

All comments must be in writing and submitted through the method(s) specified in the Addresses section above. All submissions must include the information collection title(s). Please include your name, title, organization, postal address telephone number, and email address in the text of the message. Please note that comments submitted in response to this Notice are public record. We recommend that you do not submit detailed personal information, Confidential Business Information, or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that explain why the proposed collection would be inappropriate, ineffective, or unacceptable without a change. Comments that are insubstantial or outside the scope of the notice of request for public comment may not be considered.

### Purpose

The U.S. Agency for International Development (USAID) is authorized to make contracts with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collection requirements placed on the public are published in 48 CFR chapter 7, and include the following offeror or contractor reporting requirements, identified by the AIDAR section number, as specified in the AIDAR 701.106: 752.219–8, 752.245–70, 752.245–71(c)(2), 752.247–70(c), 752.7001, 752.7002(j), 752.7003, 752.7004 and 752.7032.

The pre-award requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs using public funds. The requirements for information collection during the post-award period are based on the need to prudently administer public funds.

### Overview of Information Collections

*(1) Information Collection Elements in the USAID Acquisition Regulation (AIDAR).*

*(2) Type of Information Collection: Renewal of Information Collection under OMB No:* OMB 0412–0520.

*(3) Title of the Form:* Contractor Employee Biographical Data Sheet corresponding to AIDAR 752.7001.

*(4) Agency Form No.:* AID 1420–17.

*(5) Affected public who will be asked or required to respond:* Offerors responding to contract solicitations and contractors.

*(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond* is: USAID estimates that 4,877 respondents will submit 33,249 submissions per year. The amount of time estimated to complete each response varies by item.

*(7) An estimate of the total public burden (in hours) associated with the collections:* 43,943.

*(8) An estimate of the total public burden (in cost) associated with the collection:* $4,054,200. Note that while the burden for these information collections falls on the public, most of the submissions are reimbursable either directly or indirectly under Agency contracts, the cost for most of these collections falls under the federal cost burden. Thus, the estimated total public cost burden not reimbursed through Agency contracts is $57,570.24.

**Mark Anthony Walther,**

*Senior Procurement Executive.*

[FR Doc. 2021–04610 Filed 3–4–21; 8:45 am]

BILLING CODE 6116–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2021–0004]**

### Notice of Request for Revision to and Extension of Approval of an Information Collection; Control of Chronic Wasting Disease

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision to and extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the control of chronic wasting disease in farmed and captive cervid herds.

**DATES:** We will consider all comments that we receive on or before May 4, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0004 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations related to the control of chronic wasting disease in farmed or captive cervid herds, contact Dr. Jennifer L. Siembieda, Ruminant Health Center (Cervid Health), Strategy and Policy, Veterinary Services, 2150 Centre Ave, Building B, MS 2E6, Fort Collins, CO 80526–8117; (970) 494–7412; *Jennifer.L.Siembieda@usda.gov.* For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2533.

**SUPPLEMENTARY INFORMATION:**

*Title:* Control of Chronic Wasting Disease.

*OMB Control Number:* 0579–0189.

*Type of Request:* Revision to and extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of the United States' livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible.

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy of cervids (elk, deer, and moose) typified by chronic weight loss leading to death. The presence of CWD in cervids causes significant economic and market losses to U.S. producers. In an effort to control and limit the spread of this disease in the United States, APHIS created a cooperative, voluntary Federal-State-private sector CWD Herd Certification Program designed to identify farmed or captive herds infected with CWD. The program is designed to identify farmed or captive herds infected with CWD and provide for the management of these herds in a way that will reduce the risk of spreading CWD. APHIS' Veterinary Services manages the CWD Herd Certification Program.

Owners of farmed or captive elk, deer, and moose herds who choose to participate in the Herd Certification Program need to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. The regulations for this program are in 9 CFR part 55. Part 55 also contains the regulations that authorize the payment of indemnity for the voluntary depopulation of CWD-positive, CWD-exposed, or CWD-suspect captive cervids. APHIS also established requirements in 9 CFR part 81 for the interstate movement of deer, elk, and moose to prevent movement that could pose a risk of spreading CWD.

The Herd Certification Program and the indemnity program entail the use of information collection activities such as an APHIS Veterinary Services appraisal and indemnity claim form; sample collections and laboratory submissions, testing, and reporting; APHIS Veterinary Services State application for chronic wasting disease herd certification program approval, renewal, or reinstatement; memoranda of understanding between APHIS and participating States; herd or premises plans; annual reports; State reviews; epidemiological investigations and reporting of out-of-State traces to affected States; reports of cervid suspects, escapes, disappearances, and deaths; inspections and inventories; a letter to appeal suspension, cancellation, or change in status; farmed, captive, and wild cervid identification; interstate certificates of veterinary inspection; surveillance data; inspection reports; cooperative agreements; laboratory worksheets; and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 4 hours per response.

*Respondents:* State animal health officials, laboratories, accredited veterinarians, and businesses managing farmed, captured, or wild cervid herds.

*Estimated annual number of respondents:* 9,053.

*Estimated annual number of responses per respondent:* 9.

*Estimated annual number of responses:* 78,128.

*Estimated total annual burden on respondents:* 322,546 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 1st day of March 2021.

**Mark Davidson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–04511 Filed 3–4–21; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2021–0006]**

### Notice of Request for Reinstatement of an Information Collection; APHIS Student Outreach Program

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Reinstatement of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the Animal and Plant Health Inspection Service's Student Outreach Program.

**DATES:** We will consider all comments that we receive on or before May 4, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–

2021–0006 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on documents associated with the APHIS Student Outreach Program, contact Ms. Tammy Lowry, AgDiscovery Program Manager, Office of Civil Rights, Diversity, and Inclusion, APHIS, 4700 River Road Unit 92, Riverdale, MD 20737; (301) 851–4181. For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483.

**SUPPLEMENTARY INFORMATION:**

*Title:* APHIS Student Outreach Program.

*OMB Control Number:* 0579–0362.

*Type of Request:* Reinstatement of an information collection.

*Abstract:* The Animal and Plant Health Inspection Service's (APHIS') Student Outreach Program is designed to help students learn about careers in animal science, veterinary medicine, plant pathology, and agribusiness. The program allows participants to live on a college campus and learn about agricultural science and agribusiness from university professors, practicing veterinarians, and professionals working for the U.S. Government.

The Student Outreach Program is designed to enrich students' lives while they are still in their formative years. APHIS' investment in the Student Outreach Program not only exposes students to careers in APHIS, it also gives APHIS' employees the opportunity to meet and invest in APHIS' future workforce. Students chosen to participate in the Student Outreach Program will gain experience through hands-on labs, workshops, and field trips. Students will also participate in character and team building activities and diversity workshops. A program currently in the Student Outreach Program is AgDiscovery.

To participate in a Student Outreach Program, students and their parents must submit essays, letters of recommendation, and application packages. These submissions are reviewed and rated by officials to select the participants. In addition, cooperative agreements are used to facilitate the partnerships between APHIS and the participating universities to carry out a program.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 5.62 hours per response.

*Respondents:* Individuals and public and private universities.

*Estimated annual number of respondents:* 1,126.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 1,126.

*Estimated total annual burden on respondents:* 6,330 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 1st day of March 2021.

**Mark Davidson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–04510 Filed 3–4–21; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): 2021/2022 Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (''Department'') announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

**DATES:** Applicable date July 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sara Olson, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 1320 Braddock Place, Alexandria, Virginia 22314, (703) 605–4013.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

#### Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29100, June 24, 1983, and 49 FR 22675, May 31, 1984).

#### Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with

nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income-eligible for the WIC Program if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted. Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2021 was published by the Department of Health and Human Services (HHS) at 86 FR 7732, February 1, 2021. The guidelines published by HHS are referred to as the ''poverty guidelines.''

Program Regulations at 7 CFR 246.7(d)(1) specify that State agencies may prescribe income guidelines either equaling the income guidelines established under Section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period of July 1, 2021 through June 30, 2022. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, *i.e.,* earlier in the year, but in no case may implementation take place later than July 1, 2021. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on or before July 1, 2021.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2021 to June 30, 2022]

| Household size | Federal poverty guidelines—100% | | | | | Reduced Price Meals—185% | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Annual | Monthly | Twice-monthly | Bi-weekly | Weekly | Annual | Monthly | Twice-monthly | Bi-weekly | Weekly |
| **48 Contiguous States, DC, Guam and Territories** | | | | | | | | | | |
| 1 | $12,880 | $1,074 | $537 | $496 | $248 | $23,828 | $1,986 | $993 | $917 | $459 |
| 2 | 17,420 | 1,452 | 726 | 670 | 335 | 32,227 | 2,686 | 1,343 | 1,240 | 620 |
| 3 | 21,960 | 1,830 | 915 | 845 | 423 | 40,626 | 3,386 | 1,693 | 1,563 | 782 |
| 4 | 26,500 | 2,209 | 1,105 | 1,020 | 510 | 49,025 | 4,086 | 2,043 | 1,886 | 943 |
| 5 | 31,040 | 2,587 | 1,294 | 1,194 | 597 | 57,424 | 4,786 | 2,393 | 2,209 | 1,105 |
| 6 | 35,580 | 2,965 | 1,483 | 1,369 | 685 | 65,823 | 5,486 | 2,743 | 2,532 | 1,266 |
| 7 | 40,120 | 3,344 | 1,672 | 1,544 | 772 | 74,222 | 6,186 | 3,093 | 2,855 | 1,428 |
| 8 | 44,660 | 3,722 | 1,861 | 1,718 | 859 | 82,621 | 6,886 | 3,443 | 3,178 | 1,589 |
| Each add'l family member add | +4,540 | +379 | +190 | +175 | +88 | +8,399 | +700 | +350 | +324 | +162 |
| **Alaska** | | | | | | | | | | |
| 1 | 16,090 | 1,341 | 671 | 619 | 310 | 29,767 | 2,481 | 1,241 | 1,145 | 573 |
| 2 | 21,770 | 1,815 | 908 | 838 | 419 | 40,275 | 3,357 | 1,679 | 1,550 | 775 |
| 3 | 27,450 | 2,288 | 1,144 | 1,056 | 528 | 50,783 | 4,232 | 2,116 | 1,954 | 977 |
| 4 | 33,130 | 2,761 | 1,381 | 1,275 | 638 | 61,291 | 5,108 | 2,554 | 2,358 | 1,179 |
| 5 | 38,810 | 3,235 | 1,618 | 1,493 | 747 | 71,799 | 5,984 | 2,992 | 2,762 | 1,381 |
| 6 | 44,490 | 3,708 | 1,854 | 1,712 | 856 | 82,307 | 6,859 | 3,430 | 3,166 | 1,583 |
| 7 | 50,170 | 4,181 | 2,091 | 1,930 | 965 | 92,815 | 7,735 | 3,868 | 3,570 | 1,785 |
| 8 | 55,850 | 4,655 | 2,328 | 2,149 | 1,075 | 103,323 | 8,611 | 4,306 | 3,974 | 1,987 |
| Each add'l family member add | +5,680 | +474 | +237 | +219 | +110 | +10,508 | +876 | +438 | +405 | +203 |
| **Hawaii** | | | | | | | | | | |
| 1 | 14,820 | 1,235 | 618 | 570 | 285 | 27,417 | 2,285 | 1,143 | 1,055 | 528 |
| 2 | 20,040 | 1,670 | 835 | 771 | 386 | 37,074 | 3,090 | 1,545 | 1,426 | 713 |
| 3 | 25,260 | 2,105 | 1,053 | 972 | 486 | 46,731 | 3,895 | 1,948 | 1,798 | 899 |
| 4 | 30,480 | 2,540 | 1,270 | 1,173 | 587 | 56,388 | 4,699 | 2,350 | 2,169 | 1,085 |
| 5 | 35,700 | 2,975 | 1,488 | 1,374 | 687 | 66,045 | 5,504 | 2,752 | 2,541 | 1,271 |
| 6 | 40,920 | 3,410 | 1,705 | 1,574 | 787 | 75,702 | 6,309 | 3,155 | 2,912 | 1,456 |
| 7 | 46,140 | 3,845 | 1,923 | 1,775 | 888 | 85,359 | 7,114 | 3,557 | 3,284 | 1,642 |
| 8 | 51,360 | 4,280 | 2,140 | 1,976 | 988 | 95,016 | 7,918 | 3,959 | 3,655 | 1,828 |
| Each add'l family member add | +5,220 | +435 | +218 | +201 | +101 | +9,657 | +805 | +403 | +372 | +186 |

INCOME ELIGIBILITY GUIDELINES—HOUSEHOLD SIZE LARGER THAN 8

[Effective from July 1, 2021 to June 30, 2022]

| Household size | Federal poverty guidelines—100% | | | | | Reduced price meals—185% | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Annual | Monthly | Twice-monthly | Bi-weekly | Weekly | Annual | Monthly | Twice-monthly | Bi-weekly | Weekly |
| **48 Contiguous States, DC, Guam and Territories** | | | | | | | | | | |
| 9 | $49,200 | $4,100 | $2,050 | $1,893 | $947 | $91,020 | $7,585 | $3,793 | $3,501 | $1,751 |
| 10 | 53,740 | 4,479 | 2,240 | 2,067 | 1,034 | 99,419 | 8,285 | 4,143 | 3,824 | 1,912 |
| 11 | 58,280 | 4,857 | 2,429 | 2,242 | 1,121 | 107,818 | 8,985 | 4,493 | 4,147 | 2,074 |
| 12 | 62,820 | 5,235 | 2,618 | 2,417 | 1,209 | 116,217 | 9,685 | 4,843 | 4,470 | 2,235 |
| 13 | 67,360 | 5,614 | 2,807 | 2,591 | 1,296 | 124,616 | 10,385 | 5,193 | 4,793 | 2,397 |
| 14 | 71,900 | 5,992 | 2,996 | 2,766 | 1,383 | 133,015 | 11,085 | 5,543 | 5,116 | 2,558 |
| 15 | 76,440 | 6,370 | 3,185 | 2,940 | 1,470 | 141,414 | 11,785 | 5,893 | 5,439 | 2,720 |
| 16 | 80,980 | 6,749 | 3,375 | 3,115 | 1,558 | 149,813 | 12,485 | 6,243 | 5,763 | 2,882 |
| Each add'l family member add | +4,540 | +379 | +190 | +175 | +88 | +8,399 | +700 | +350 | +324 | +162 |
| **Alaska** | | | | | | | | | | |
| 9 | 61,530 | 5,128 | 2,564 | 2,367 | 1,184 | 113,831 | 9,486 | 4,743 | 4,379 | 2,190 |
| 10 | 67,210 | 5,601 | 2,801 | 2,585 | 1,293 | 124,339 | 10,362 | 5,181 | 4,783 | 2,392 |
| 11 | 72,890 | 6,075 | 3,038 | 2,804 | 1,402 | 134,847 | 11,238 | 5,619 | 5,187 | 2,594 |
| 12 | 78,570 | 6,548 | 3,274 | 3,022 | 1,511 | 145,355 | 12,113 | 6,057 | 5,591 | 2,796 |
| 13 | 84,250 | 7,021 | 3,511 | 3,241 | 1,621 | 155,863 | 12,989 | 6,495 | 5,995 | 2,998 |
| 14 | 89,930 | 7,495 | 3,748 | 3,459 | 1,730 | 166,371 | 13,865 | 6,933 | 6,399 | 3,200 |
| 15 | 95,610 | 7,968 | 3,984 | 3,678 | 1,839 | 176,879 | 14,740 | 7,370 | 6,804 | 3,402 |
| 16 | 101,290 | 8,441 | 4,221 | 3,896 | 1,948 | 187,387 | 15,616 | 7,808 | 7,208 | 3,604 |
| Each add'l family member add | +5,680 | +474 | +237 | +219 | +110 | +10,508 | +876 | +438 | +405 | +203 |
| **Hawaii** | | | | | | | | | | |
| 9 | 56,580 | 4,715 | 2,358 | 2,177 | 1,089 | 104,673 | 8,723 | 4,362 | 4,026 | 2,013 |
| 10 | 61,800 | 5,150 | 2,575 | 2,377 | 1,189 | 114,330 | 9,528 | 4,764 | 4,398 | 2,199 |
| 11 | 67,020 | 5,585 | 2,793 | 2,578 | 1,289 | 123,987 | 10,333 | 5,167 | 4,769 | 2,385 |
| 12 | 72,240 | 6,020 | 3,010 | 2,779 | 1,390 | 133,644 | 11,137 | 5,569 | 5,141 | 2,571 |
| 13 | 77,460 | 6,455 | 3,228 | 2,980 | 1,490 | 143,301 | 11,942 | 5,971 | 5,512 | 2,756 |
| 14 | 82,680 | 6,890 | 3,445 | 3,180 | 1,590 | 152,958 | 12,747 | 6,374 | 5,883 | 2,942 |
| 15 | 87,900 | 7,325 | 3,663 | 3,381 | 1,691 | 162,615 | 13,552 | 6,776 | 6,255 | 3,128 |
| 16 | 93,120 | 7,760 | 3,880 | 3,582 | 1,791 | 172,272 | 14,356 | 7,178 | 6,626 | 3,313 |
| Each add'l family member add | +5,220 | +435 | +218 | +201 | +101 | +9,657 | +805 | +403 | +372 | +186 |

The table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all United States Territories, including Guam. Separate tables for Alaska and Hawaii have been included for the convenience of the State agencies because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States.

**Authority:** 42 U.S.C. 1786.

**Cynthia Long,**

*Acting Administrator, Food and Nutrition Service, USDA.*

[FR Doc. 2021–04532 Filed 3–4–21; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

**[Docket Number: RBS–21–BUSINESS–0003]**

### Inviting Applications for Value-Added Producer Grants and Solicitation of Grant Reviewers

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice; amendment.

**SUMMARY:** The Rural Business-Cooperative Service (Agency) published a notice in the **Federal Register** on December 21, 2020 inviting applications for the Value-Added Producer Grant (VAPG) program. Subsequently, the Consolidated Appropriations Act, 2021, which provides $35 million in COVID–19 relief funds, was enacted. Accordingly, a total of $76 million in program funding is available. The agency is extending the application deadline, increasing available total funding for the program; allowing for application submission through email; eliminating the awarding of points for the Level of Commitment category specified in Section 1(c) of the original notice, and allowing for a reduced cost share match of 10 percent of the grant amount for the $35 million in COVID–19 relief funds. You should review this notice in its entirety for more specific information on changes that have been made to the original notice.

**DATES:** You must submit your application by May 4, 2021 for it to be considered for funding. Paper applications must be postmarked and mailed, shipped, or sent overnight by this date. You may also email or hand carry your application to one of our field offices, but applications submitted by this method must be received by 4:30 p.m. local time on May 4, 2021. Applications are permitted via *https://www.grants.gov/* and must be received by 11:59 p.m. Eastern time on April 29, 2021. Late applications are not eligible for grant funding under this Notice.

**ADDRESSES:** To submit a paper application, send it to the State Office located in the State where your project will primarily take place. You can find State Office contact information at *http://www.rd.usda.gov/contact-us/state-offices.* To submit an application through email, contact your respective State Office before May 4, 2021 to obtain the Agency email address where you will submit your application. If you want to submit an application through *Grants.gov*, follow the instructions for the VAPG funding announcement on *https://www.grants.gov/.* Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the *Grants.gov* application deadline.

You should contact your USDA Rural Development State Office if you have questions about eligibility or submission requirements. You are encouraged to contact your State Office well in advance of the application deadline to discuss your project and to ask any questions about the application process. Application materials are available at *http://www.rd.usda.gov/programs-services/value-added-producer-grants.*

**FOR FURTHER INFORMATION CONTACT:** Greg York at (202) 281–5289, *gregory.york@usda.gov,* or Mike Daniels at (715) 345–7637, *mike.daniels@usda.gov,* Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3226, Room—5801–S, Washington, DC 20250–3226, 202–720–1400, or email at *CPgrants@usda.gov*.

**SUPPLEMENATARY INFORMATION:**

*Authority:*

The VAPG program is authorized under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), as amended by section 10102 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (see 7 U.S.C. 1627c). Applicants must adhere to the requirements contained in the program regulation, 7 CFR part 4284, subpart J, which is incorporated by reference in this Notice.

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0064.

## Overview

*Federal Agency Name:* USDA Rural Business-Cooperative Service.

*Funding Opportunity Title:* Value-Added Producer Grant.

*Announcement Type:* Notice of Solicitation of Applications and Solicitation of Grant Reviewers.

*Catalog of Federal Domestic Assistance Number:* 10.352.

*Dates:* Application Deadline. You must submit your application by May 4, 2021 for it to be considered for funding. Paper applications must be postmarked and mailed, shipped or sent overnight by this date. You may also email or hand carry your application to one of our field offices, but it must be received by 4:30 p.m. local time on May 4, 2021. Applications are permitted via *https://www.grants.gov/* and must be received before 11:59 p.m. Eastern time on April 29, 2021. Late applications are not eligible for grant funding under this Notice.

## I. Background

The Agency published a Notice in the **Federal Register** on December 21, 2020 (85 FR 83038) (the original notice) announcing the availability of funding for competitive grants to assist eligible agricultural producers in starting or expanding value-added activities related to the processing and marketing of new products. The goals of this program are to generate new products, create and expand marketing opportunities, and increase producer income.

Under the original notice, applicants had until March 22, 2021 to submit a paper application and until March 16, 2021 to submit applications through *Grants.gov* (the new due dates are as specified in Section III(4) below). The original solicitation required the applicant to provide cost sharing match of at least $1 for every $1 in grant funds provided by the Agency.

The purpose of this Notice is to announce that the Consolidated Appropriations Act, 2021 (the FY 2021 Appropriations Act), provides an additional $35 million in funding for COVID–19 relief and allows for a reduced cost-share match of 10 percent of the grant amount (*i.e.,* at least $1 from the applicant for every $10 in Agency grant funds) for these funds during the public health emergency.

## II. General Funding Information

### *A. Type of Instrument*

Grant. Maximum award amount for Planning Grant is $75,000; maximum award amount for Working Capital Grant is $250,000.

### *B. Available Funds*

There is approximately $76 million in available funding. Of this amount, the COVID–19 relief funds constitute $35 million and the other $41 million comes from the FY 2021 Appropriations Act and carryover funding from fiscal year 2020. The $35 million in COVID–19 relief funds may include a reduced cost share match requirement of 10 percent of the grant amount. The other available funds have a statutory cost share match requirement of 100 percent of the grant amount. Please see section III., ''Program Requirements and Changes,'' for additional information.

### *C. Approximate Number of Awards*

The number of awards will depend on the number of eligible participants and the total amount of requested funds.

## III. Program Requirements and Changes

To be eligible for an award under this solicitation, applications must meet all the requirements contained in the original notice with the following exceptions for this amended notice:

1. Total available funding for FY 2021 is approximately $76 million.

2. Your application may include a reduced cost-share match of 10 percent of grant funds if you are competing for the $35 million in FY 2021 COVID–19 relief funds. You are not required to demonstrate how your business operations were impacted by the COVID–19 pandemic. Relief funds will be awarded in application scoring rank order until exhausted. If your application for COVID–19 relief funds is not selected for funding through the competitive process, you will have the opportunity to compete for the additional $41 million in funds if your application scores 50 points or above. You will be contacted by the Agency and will be required to submit a revised budget and work plan that includes the standard cost-share match of at least $1 for every $1 in grant funds. Applicants unable to meet the standard cost-share match will be ineligible to compete for the additional funding.

3. For the FY 2021 VAPG cycle, the Level of Commitment assignment of points for in-kind and cash match contributions will be eliminated from Commitments and Support scoring criterion (c).

Points for Commitments and Support will be redistributed as follows:

(i) 0 points will be awarded if you do not address the criterion.

(ii) Independent Producer Commitment:

(A) Sole Proprietor (one owner/producer): 1 point.

(B) Multiple Independent Producers (note: in cases where family members, such as husband and wife, are eligible Independent Producers, each family member will count as one Independent Producer): 2 points.

(iii) End-user commitment:

(A) No or insufficiently documented commitment from end-users: 0 points.

(B) Well-documented commitment from one end-user: 2 points.

(C) Well-documented commitment from more than one end-user: 4 points.

(iv) Third-party commitment:

(A) No, or insufficiently documented, commitment from third-parties: 0 points.

(B) Well-documented commitment from one third-party: 2 points.

(C) Well-documented commitment from more than one third-party: 4 points.

4. You must submit your application by May 4, 2021 for it to be considered for funding. Paper applications must be postmarked and mailed, shipped or sent overnight by this date. You may also

email or hand carry your application to one of our field offices, but it must be received by 4:30 p.m. local time on May 4, 2021. Applications are permitted via *https://www.grants.gov/* and must be received before 11:59 p.m. Eastern time on April 29, 2021. Late applications are not eligible for grant funding under this Notice.

5. If you are interested in serving as a non-federal independent grant reviewer, please send a resume addressing relevant qualifications and experience to *CPGrants@wdc.usda.gov* by April 5, 2021.

Program information and revised application templates can also be found at *https://www.rd.usda.gov/programs-services/value-added-producer-grants.*

**Mark Brodziski,**

*Acting Administrator, Rural Business—Cooperative Service.*

[FR Doc. 2021–04687 Filed 3–4–21; 8:45 am]

BILLING CODE 3410–XY–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Massachusetts Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Wednesday, March 24, 2021 at 2:00 p.m. (ET). The purpose of the meeting is to a complete and conclude its project on the water accessibility in Massachusetts and begin plans for its next project topic.

**DATES:** Wednesday, March 24, 2021 at 2:00 p.m. (ET).

*Public Webex Conference Registration Link (video and audio): https://tinyurl.com/35ajmnuk.*

*To Join by Phone Only:* Dial 1–800–360–9505; Access code: 199 414 6129.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

**Agenda**

*Wednesday, March 24, 2021; 2:00 p.m. (ET)*

1. Roll call
2. Water Project—final steps
3. Planning Next Project
4. Public Comment
5. Other Business
6. Adjourn

Dated: March 1, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–04539 Filed 3–4–21; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–3–2021]**

### Approval of Subzone Status; Coating Place, Inc., Verona, Wisconsin

On January 6, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by Dane County, Wisconsin, grantee of FTZ 266, requesting subzone status subject to the existing activation limit of FTZ 266, on behalf of Coating Place, Inc., in Verona, Wisconsin.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 2382, January 12, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 266B was approved on March 2, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 266's 648-acre activation limit.

Dated: March 2, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–04571 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–14–2021]**

### Foreign-Trade Zone (FTZ) 24—Pittston, Pennsylvania; Notification of Proposed Production Activity; Merck & Co., Inc. (Pharmaceutical Products); Riverside, Pennsylvania

Merck & Co., Inc. (Merck), submitted a notification of proposed production activity to the FTZ Board for its facility in Riverside, Pennsylvania. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 24, 2021.

Merck already has authority to produce pharmaceutical products within Subzone 24B. The current request would add finished products and foreign status materials to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Merck from customs duty payments on the foreign-status materials used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Merck would be able to choose the duty rates during customs entry procedures that apply to PRIMAXIN intermediate (imipenem and cilastatin bulk) and INVANZ intermediate (ertapenem sodium) (duty-free). Merck would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials sourced from abroad include: imipenem input; cilastatin input; ertapenem sodium input; BIS (2,

4-Dichlorophenyl) Chlorophosphate; Bi-Cyclic ADC–13 Ketone; Enol Phosphate; and, D-Carboxamide (duty rate ranges from duty-free to 6.5%). The request indicates that the materials are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 14, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: March 2, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–04575 Filed 3–4–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–67–2020]**

### Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Authorization of Limited Production Activity; Ricoh Electronics, Inc. (Toner Products, Thermal Paper and Thermal Film), Lawrenceville and Buford, Georgia

On, November 2, 2020, Ricoh Electronics, Inc. (Ricoh) submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ 26 in Lawrenceville and Buford, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 72620–72621, November 13, 2020). On March 2, 2021, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a five-year time limit on authorization for Ricoh to admit its ''titanium dioxide mixture'' input in nonprivileged foreign status (19 CFR 146.42).

Dated: March 2, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–04570 Filed 3–4–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–231–2020]**

### Approval of Subzone Status; Baxter Healthcare Corporation; Byhalia, Mississippi

On December 29, 2020, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Northern Mississippi FTZ, Inc., grantee of FTZ 262, requesting subzone status subject to the existing activation limit of FTZ 262, on behalf of Baxter Healthcare Corporation, in Byhalia, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 286, January 5, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 262E was approved on March 2, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 262's 2,000-acre activation limit.

Dated: March 2, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–04615 Filed 3–4–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–895]**

### Certain Crepe Paper Products From the People's Republic of China: Continuation of Antidumping Duty Order

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on certain crepe paper products (crepe paper) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

**DATES:** Applicable March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Galantucci, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2923.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 25, 2005, Commerce published the AD order on crepe paper from China.[1] On August 4, 2020, Commerce published the notice of initiation of the five-year review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce conducted this sunset review on an expedited basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because it received a complete, timely, and adequate response from a domestic interested party,[3] but no substantive response from respondent interested parties. As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce also notified the ITC of the magnitude of the dumping margins likely to prevail should the *Order* be revoked.[4]

On February 26, 2021, the ITC published its determination, pursuant to section 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

#### Scope of the Order

For purposes of the *Order,* the term ''certain crepe paper'' includes crepe

[1] *See Notice of Antidumping Duty Order: Certain Crepe Paper from the People's Republic of China,* 70 FR 3509 (January 25, 2005) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 47185 (August 4, 2020).

[3] The domestic interested party is Seamen Paper Company of Massachusetts, Inc.

[4] *See Certain Crepe Paper Products from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 85 FR 78828 (December 7, 2020).

[5] *See Crepe Paper from China,* 86 FR 11793 (February 26, 2021); *see also Crepe Paper from China,* Inv. No. 731–TA–1070A (Third Review), USITC Pub. 5163, dated February 2021.

paper products that have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this order may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be entered under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

## Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

## Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 1, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021–04614 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–851–804]**

# Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic: Final Affirmative Determination of Sales at Less Than Fair Value

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

**SUMMARY:** The Department of Commerce (Commerce) determines that seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from the Czech Republic is being, or is likely to be, sold in the United States at less than fair value (LTFV).

**DATES:** Applicable March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 21, 2020, Commerce published in the **Federal Register** the *Preliminary Determination.*[1] We invited interested parties to comment on the *Preliminary Determination.* We received comments on the *Preliminary Determination* from Vallourec Star, LP (the petitioner), a domestic producer of seamless pipe.[2] In its case brief, the petitioner urges Commerce to adopt the findings and results of the *Preliminary Determination* in this final determination.[3]

## Period of Investigation

The period of investigation is July 1, 2019, through June 30, 2020.

## Scope of the Investigation

The products covered by this investigation are seamless pipe and redraw hollows from the Czech Republic, less than or equal to 16 inches in nominal outside diameter, regardless of wall-thickness, manufacturing process, end finish, or surface finish. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

## Scope Comments

During the course of this investigation, Commerce received comments from interested parties on the scope of the investigation as it appeared in the *Initiation Notice.*[4] Commerce issued a Preliminary Scope Decision Memorandum to address these comments.[5] We did not receive comments from interested parties on the Preliminary Scope Decision Memorandum. As discussed in Preliminary Scope Decision Memorandum, Commerce is modifying the scope language as it appeared in the *Initiation Notice* to clarify certain exclusions. *See* the revised scope in the Appendix to this notice.

## Use of Adverse Facts Available

As discussed in the *Preliminary Determination,* Commerce assigned to the mandatory respondents in this investigation, Liberty Ostrava A.S. and Moravia Steel A.S., estimated weighted-average dumping margins on the basis of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).[6] There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination.* Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is

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[1] *See Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 85 FR 83059 (December 21, 2020) (*Preliminary Determination*).

[2] *See* Petitioner's Letter, ''Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (''SSLPP'') from Czechia: Case Brief,'' dated January 20, 2021.

[3] *Id.*

[4] *See Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 47176 (August 4, 2020) (*Initiation Notice*).

[5] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Preliminary Scope Decision Memorandum,'' dated January 13, 2021 (Preliminary Scope Decision Memorandum).

[6] *See Preliminary Determination,* 85 FR at 83060.

warranted with respect to Liberty Ostrava A.S. and Moravia Steel A.S.

### All-Others Rates

As discussed in the *Preliminary Determination,* Commerce based the all-others rate on the simple average of the dumping margins alleged in the petition, in accordance with section 735(c)(5)(B) of the Act.[7] We made no changes to the selection of the all-others rate for this final determination.

### Final Determination

The final estimated weighted-average dumping margins are as follows:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Liberty Ostrava A.S | 51.70 |
| Moravia Steel A.S | 51.70 |
| All Others | 51.07 |

### Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to both mandatory respondents in this investigation, there are no calculations to disclose.

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of seamless pipe from the Czech Republic, as described in the Appendix to this notice, entered, or withdrawn from warehouse, for consumption on or after December 21, 2021, the date of publication of *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

### International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of seamless pipe from the Czech Republic no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

### Notification Regarding Administrative Protective Orders

This notice will serve as a final reminder to the 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 or 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.

### Notification to Interested Parties

This determination and notice is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 1, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix—Scope of the Investigation

The merchandise covered by the scope of this investigation is seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in nominal outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or ''hollow profiles'' suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (ASTM) or American Petroleum Institute (API) specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 51 specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusions discussed below.

Specifically excluded from the scope of the investigation are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications, including pipe produced to the ASTM A–822 standard; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigation are (1) all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness, of ASTM A–53, ASTM A–106 or API 51 specifications. Also excluded from the scope of the investigation are: (1) Oil country tubular goods consisting of drill pipe, casing, tubing and coupling stock; (2) all pipes meeting the chemical requirements of ASTM A–335 regardless of their conformity to the dimensional requirements of ASTM A–53, ASTM A–106 or API 5L; and (3) the exclusion for ASTM A335 applies to pipes meeting the comparable specifications GOST 550–75.

Subject seamless standard, line, and pressure pipe are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055,

[7] *Id.*

7304.59.8060, 7304.59.8065, and 7304.59.8070. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2021–04567 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–489–845]

## Certain Aluminum Foil From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the Republic of Turkey (Turkey) during the period of investigation January 1, 2019, through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Whitley Herndon or Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274, or (202) 482–3878, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on October 28, 2020.[1] On December 3, 2020, Commerce postponed the preliminary determination to February 26, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The product covered by this investigation is aluminum foil from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum foil as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is April 27, 2021.[6] We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.[7]

### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because Commerce finds that the Government of Turkey did not act to the best of its ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[9] For further information, *see* ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the Preliminary Decision Memorandum.

### Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum foil from Turkey based on a request made by the petitioners.[10] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 12, 2021, unless postponed.

### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or based entirely under section 776 of the Act.

[1] *See Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 85 FR 68287 (October 28, 2020) (*Initiation Notice*).

[2] *See Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 85 FR 78121 (December 3, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 85 FR at 68288.

[6] *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 86 FR 9909 (February 17, 2021).

[7] The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* sections 776(a) and (b) of the Act.

[10] *See* Petitioners' Letter, ''Countervailing Duty Investigations of Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey—Petitioners' Request to Align Final Countervailing Duty Determinations With The Companion Antidumping Duty Final Determinations,'' dated February 11, 2021. The petitioners are Aluminum Association Trade Enforcement Working Group and its individual members, Granges Americas Inc., JW Aluminum Company, and Novelis Corporation.

Commerce calculated an individual estimated countervailable subsidy rate for Assan Aluminyum Sanayi ve Ticaret A.S. (Assan), the only individually-examined exporter/producer in this investigation.[11] Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Assan is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (*ad valorem*) (percent) |
|---|---|
| Assan Aluminyum Sanayi ve Ticaret A.S.[12] | 2.79 |
| All Others | 2.79 |

**Suspension of Liquidation**

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum foil investigations, regardless of the deadlines of the preliminary determinations in the AD investigations. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum foil investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the deadline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum foil from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: February 26, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape. Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are

[11] Commerce also selected Kibar Dis Ticaret A.S. (Kibar Dis) as a mandatory company respondent in this investigation. Based on Kibar Dis' questionnaire response, we preliminarily find that it is a cross-owned affiliate of Assan. Therefore, we are not calculating a separate subsidy rate for Kibar Dis. *See* Preliminary Decision Memorandum.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has preliminarily found Kibar Dis Ticaret A.S., Kibar Holding, and Ispak Esnek Ambalaj Sanayi A.S. to be cross-owned, pursuant to 19 CFR 351.525(b)(6)(vi), with Assan Aluminyum Sanayi ve Ticaret A.S.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6090, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000.

Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3091, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Subsidies Valuation
VI. Benchmarks and Interest Rates
VII. Use of Facts Otherwise Available and Application of Adverse Inferences
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2021–04565 Filed 3–4–21; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–523–816]**

## Certain Aluminum Foil From the Sultanate of Oman: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the Sultanate of Oman (Oman) during the period of investigation, January 1, 2019, through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on October 28, 2020.[1] On December 3, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now February 26, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The product covered by this investigation is aluminum foil from Oman. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] We received several comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of aluminum foil as it appeared in the *Initiation Notice.* We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is April 27, 2021.[6] We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.[7]

### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

### Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum foil from Oman based on a request made by the petitioners.[9] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled no later than July 12, 2021, unless postponed.

### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount

[1] *See Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 85 FR 68287 (October 28, 2020) (*Initiation Notice*).

[2] *See Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 85 FR 78121 (December 3, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Aluminum Foil from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice.*

[6] *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 86 FR 9909 (February 17, 2021).

[7] The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* Petitioners' Letter, ''Countervailing Duty Investigations of Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey—Petitioners' Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations,'' dated February 11, 2021. The petitioners are Aluminum Association Trade Enforcement Working Group and its individual members, Granges Americas Inc., JW Aluminum Company, and Novelis Corporation.

equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Commerce calculated an individual estimated countervailable subsidy rate for Oman Aluminum Rolling Company LLC (OARC), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for OARC is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

## Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent) |
|---|---|
| Oman Aluminum Rolling Company LLC/Sohar Paper Cores LLC | 2.15 |
| All Others | 2.15 |

## Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

## Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

## Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

## Public Comment

All interested parties will have the opportunity to submit case and rebuttal briefs on the preliminary scope determination. The deadline to submit these comments will be established in the preliminary scope decision memorandum. Scope rebuttal briefs (which are limited to issues raised in the scope briefs) may be submitted no later than seven days after the deadline for the scope briefs. These deadlines apply to the AD and CVD aluminum foil investigations, regardless of the deadlines of the preliminary determinations in the AD investigations. For all scope briefs and rebuttals thereto, parties must file identical documents simultaneously on the records of all the ongoing AD and CVD aluminum foil investigations. No new factual information or business proprietary information may be included in either scope briefs or rebuttal scope briefs.

Case briefs or other written comments on non-scope matters may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the deadline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

## International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If Commerce's final determination is affirmative the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum foil from Oman are materially injuring, or threaten material injury to, the U.S. industry.

## Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c). Due to technical issues, James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations is signing this preliminary determination on behalf of Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations.

Dated: February 26, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as *etc*hed capacitor foil and aluminum foil that is cut to shape. Where the nominal and actual measurements vary, a product is within the

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6090, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000.

Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3091, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope Comments
IV. Scope of Investigation
V. New Subsidy Allegation
VI. Subsidies Valuation
VII. Benchmarks
VIII. Partial Use of Facts Available
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2021–04566 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XA839]**

## Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Draft Phase II Restoration Plan: #3.2: Mid-Barataria Sediment Diversion

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and a Consent Decree with BP Exploration & Production Inc. (BP),[1] the *Deepwater Horizon* (DWH) Federal and state natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared a Draft Phase II Restoration Plan 3.2 (Draft Phase II RP #3.2). The Draft Phase II RP #3.2 describes and proposes restoration project alternatives considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the DWH oil spill. The Louisiana TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment regulations. In accordance with NEPA the environmental consequences of the restoration alternatives are evaluated in the associated U.S. Army Corps of Engineers, New Orleans District (USACE CEMVN) Draft Environmental Impact Statement for the Proposed Mid Barataria Sediment Diversion Project, Plaquemines and Jefferson Parishes [2] (MBSD DEIS) to which the Louisiana TIG Federal Trustees are cooperating agencies. The purpose of this notice is to inform the public of the availability of the Draft Phase II RP #3.2 and to seek public comments on the document.

**DATES:** *Submitting Comments:* The Louisiana TIG will consider public comments received on or before May 4, 2021.

*Virtual Public Meetings:* Due to continuing COVID–19 limitations on gatherings of groups, the Louisiana TIG will co-host three virtual public meetings with the USACE CEMVN on the following dates:

1. April 6, 2021, 9 a.m. CDT
2. April 7, 2021, 1 p.m. CDT
3. April 8, 2021, 6 p.m. CDT

**ADDRESSES:** *Obtaining Documents:* You may download the Draft Phase II RP #3.2 at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.* The associated MBSD DEIS may be downloaded at: *http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/.*

*Submitting Comments:* You may submit comments on the Draft Phase II RP #3.2 and the associated MBSD DEIS by the following methods:

- *Via the Web: https://parkplanning.nps.gov/MBSD;*
- *Via U.S. Mail:* U.S. Army Corps of Engineers, New Orleans District, Attn: CEMVN–OD–SE, MVN–2012–2806–EOO, 7400 Leake Avenue, New Orleans, LA 70118. Please note that mailed comments must be postmarked on or before the comment deadline of 60 days following publication of this notice to be considered; or
- *During the virtual public meetings*: Comments may be provided during the webinar. Webinar information is provided below in **SUPPLEMENTARY INFORMATION.**

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.

You only need to submit your comment via one of these methods. All comments submitted will be reviewed by both the Louisiana TIG and CEMVN. All comments made during the comment period time-frame as described above will become part of the record.

**FOR FURTHER INFORMATION CONTACT:** National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, (310) 427–8711, *gulfspill.restoration@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Introduction

On April 20, 2010, the mobile offshore drilling unit DWH, which was being used to drill a well for BP, in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The DWH Federal and State natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the DWH oil spill under OPA (33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions

[1] Consent Decree among Defendant BP Exploration & Production Inc. (''BPXP''), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas entered in *In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010,* MDL No. 2179 in the United States District Court for the Eastern District of Louisiana.

[2] The USACE CEMVN EIS Mid-Barataria Sediment Diversion project web page is accessible here: *http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-*
EIS/.

required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The DWH Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are selected and implemented by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA; LOSCO; LDEQ; LDWF; LDNR; NOAA; DOI; EPA; and USDA.

## Background

On March 20, 2018, the Louisiana TIG completed its Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In addition to identifying a restoration strategy for the Barataria Basin and confirming its 2018 decision to move forward with the Spanish Pass Increment of the Barataria Basin Ridge and Marsh Creation project, the SRP/EA also advanced a large-scale sediment diversion for further evaluation and planning in a future Phase II restoration plan. Since approval of the SRP/EA #3, the Louisiana TIG has been evaluating a variety of potential alternatives for this large-scale sediment diversion to meet its purpose: deliver freshwater sediment, and nutrients to the Barataria Basin through a large-scale sediment diversion from the Mississippi River; reconnect and re-establish sustainable deltaic processes between the Mississippi River and the Barataria Basin; and create, restore, and sustain wetlands and other deltaic habitats and associated ecosystem services. Tiering from the SRP/EA #3, the Louisiana TIG is proposing in this Phase II RP #3.2 implementation of the Mid Barataria Sediment Diversion project.

## Overview of the Louisiana TIG Draft Phase II RP #3.2

The Draft Phase II RP #3.2 is being released in accordance with OPA NRDA regulations in 15 CFR part 990, NEPA (42 U.S.C. 4321 *et seq.*), the Consent Decree, and the Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement. The Draft Phase II RP #3.2 focuses on an area (''the Project Area'') on the west bank of the Mississippi River at River Mile (RM) 60.7, just north of the Town of Ironton; the anticipated outfall area for sediment, freshwater, and nutrients conveyed from the river is located within the Mid-Barataria Basin. The area of the Proposed MBSD Project and its alternatives includes the hydrologic boundaries of the Barataria Basin and the western portion of the lower Mississippi River Delta Basin, also known as the birdfoot delta. The Mississippi River itself, beginning near RM 60.7 and extending to the mouth of the river, is also included in the Proposed MBSD Project area. In the Draft Phase II RP #3.2, the Louisiana TIG proposes a preferred design alternative for the MBSD Project to be funded under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type allocation. The preferred alternative (Alternative 1) consists of a controlled sediment and freshwater intake diversion structure in Plaquemines Parish on the right descending bank of the Mississippi River at RM 60.7. The preferred alternative would have a maximum diversion flow of 75,000 cubic feet per second (cfs), which would occur when the Mississippi River gauge at Belle Chase reaches 1,000,000 cfs or higher. The diversion would operate at up to 5,000 cfs (base flow) when the river is below 450,000 cfs at Belle Chase; at river flows above 450,000 cfs, the diversion would be opened fully. At the downstream end of the diversion channel, an engineered area, ''outfall transition feature'' would be constructed to guide and disperse the channel flow into the Barataria Basin. The preferred alternative is projected to increase land area, including emergent wetlands and mudflats, in the Barataria Basin across the 50-year analysis period relative to natural recovery, with a maximum increase of 17,300 acres in 2050, at the approximate mid-point of the 50-year analysis period. The proposed investment by the Louisiana TIG for this alternative is approximately $2 billion. This cost reflects current cost-estimates developed from the most current designs and information available to the Louisiana TIG at the time of drafting this restoration plan. Estimated costs reflect all costs associated with implementing the Proposed MBSD Project, potentially including, but not limited to, revising/finalizing engineering and design, permitting, mitigation, land acquisition, construction, monitoring and adaptive management, Trustee oversight, associated stewardship actions, and contingencies. A portion of the engineering and permitting costs has been paid by the National Fish and Wildlife Federation's Gulf Environmental Benefit Fund.

The Louisiana TIG fully evaluated a smaller-capacity diversion with a maximum capacity of 50,000 cfs (Alternative 2). The Trustees found that such a diversion would provide substantially less benefit in marsh preservation and restoration, with only a small reduction in adverse impacts and a slight cost reduction.

The Louisiana TIG also fully evaluated a larger-capacity diversion with a maximum capacity of 150,000 cfs (Alternative 3). While the marsh creation benefits of such a large diversion would be significantly greater, the collateral injuries and cost would also increase to levels unacceptable to the Trustees.

Alternatives 4–6 are similar to Alternatives 1–3, respectively, but also would include marsh terrace outfall features. The terraces would be chevron or ''v'' shaped, and oriented toward the discharge current from the diversion. The marsh terrace features would aid in overall sediment retention, would help protect newly deposited sediment from erosion, and would be designed to avoid

interfering with the ability of the basin to receive diversion flows. While providing some benefits, the outfall feature alternatives do not substantially change the extent to which the corresponding alternatives with similar capacity and without terraces meet the Proposed MBSD Project's goals and objectives.

While the Louisiana TIG has rejected the No-Action-Alternative for this Draft Phase II RP #3.2, the OPA analysis provided in Chapter 3 integrates information about the MBSD DEIS No-Action Alternative (40 CFR 1502.14(c)) because it provides a baseline against which the benefits and collateral injuries of the Proposed MBSD Project and its alternatives can be compared.

The Louisiana TIG is committed to continuing efforts to restore the resources that would be adversely affected by the diversion, many of which were also injured by the DWH oil spill. This Draft Phase II RP #3.2 includes proposed strategies to help avoid, minimize, and mitigate collateral injuries to these resources. These include proactive strategies to address the communities, individuals, and stakeholders that rely on the resources that could be harmed by the proposed diversion.

The Louisiana TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In Draft Phase II RP #3.2, the Louisiana TIG presents to the public its draft plan for providing partial compensation to the public for injured natural resources and ecological services in the Louisiana Restoration Area. The preferred alternative is intended to continue the process of using DWH restoration funding to restore natural resources injured or lost as a result of the DWH oil spill. Additional restoration planning for the Louisiana Restoration Area will continue.

The Draft Phase II Restoration Plan #3.2 does not include integrated NEPA analysis. Under OPA NRDA regulations, Trustees typically choose to combine a restoration plan and the required NEPA analysis into a single document (33 CFR 990.23(a), (c)(1)). Prior to evaluation of the Proposed MBSD Project by the Louisiana TIG as a proposed restoration project under OPA, the U.S. Army Corps of Engineers (USACE CEMVN) initiated scoping for the MBSD Project EIS, which was initiated through a permit application for the project by CPRA. In this case, to increase efficiency, reduce redundancy, and be consistent with Federal policy and 40 CFR 1506.3, the four Federal Trustees in the Louisiana TIG decided to participate as cooperating agencies in the development of a single MBSD DEIS. As the lead agency, the USACE CEMVN has primary responsibility for preparing the MBSD DEIS (40 CFR 1501.5(a)). The Louisiana TIG is relying on the MBSD DEIS to evaluate potential environmental effects of the restoration alternatives proposed in this Draft Phase II RP #3.2. Adoption of the MBSD Final EIS by the Louisiana TIG would be completed upon signature of a Record of Decision (ROD). Public review and opportunity to comment, and virtual public meetings on both the Draft Phase II RP #3.2 and the MBSD DEIS are being run concurrently.

## Next Steps

The public is encouraged to review and comment on the Draft Phase II RP #3.2 and associated MBSD DEIS. Virtual public meetings are scheduled to facilitate the public review and comment process for both documents. Each virtual meeting will include a presentation of the Draft Phase II RP #3.2 and a presentation of the associated MBSD DEIS. Following the presentations, public comment will be taken through the virtual meeting platform. Presentation slides, project fact sheets, and a recording of the webinar will be posted on the Louisiana TIG website. Instructions on how to access the virtual meetings by computer or telephone will be provided on the Louisiana TIG's website approximately two weeks prior to the first meeting.

After the public comment period ends, the Louisiana TIG will consider and address the comments received before issuing a Final Phase II RP #3.2. A summary of comments received and the Louisiana TIG's responses and any revisions to the document, as appropriate, will be included in the final document. After issuing the Final Phase II RP #3.2 and completion of the Final MBSD EIS, the Louisiana TIG anticipates preparing a ROD that formally adopts the MBSD Final EIS and selects an alternative for implementation.

## Additional Access to Materials

You may request a CD of the Draft Phase II RP #3.2 (see **FOR FURTHER INFORMATION CONTACT** above). Copies of the Draft Phase II RP #3.2 and MBSD DEIS are also available for review during the public comment period at the following locations:

REPOSITORIES WITH PAPER COPIES OF THE DRAFT PHASE II RP #3.2 AND MBSD DEIS

| Location | Address |
|---|---|
| Lafitte Library | 4917 City Park Drive, Lafitte, LA 70067, (504) 689–5097. |
| West Bank Regional Library | 2751 Manhattan Blvd., Harvey, LA 70058, (504) 364–2660. |
| East New Orleans Regional Library | 5641 Read Boulevard, New Orleans, LA 70127, (504) 596–0200. |
| Belle Chasse Library | 8442 Highway 23, Belle Chasse, LA 70037, (504) 394–3570. |
| Port Sulphur Library | 139 Civic Drive, Port Sulphur, LA 70083, (337) 527–7200. |
| Buras Library | 35572 Highway 11, Buras, LA 70041, (504) 564–0944. |
| South Lafourche Library | 16241 East Main Street, Cut Off, LA 70345, (985) 632–7140. |
| St. Charles Parish Library, Paradis Branch | 307 Audubon St, Paradis, LA 70080, (985) 758–1868. |

REPOSITORIES WITH PAPER COPIES OF THE DRAFT PHASE II RP #3.2 AND MBSD DEIS EXECUTIVE SUMMARY, AND ELECTRONIC COPIES OF THE MBSD DEIS AND APPENDICES ON A USB

| Location | Address |
|---|---|
| St. Tammany Parish Library | 310 W. 21st Ave., Covington, LA 70433, (985) 893–6280. |
| Terrebonne Parish Library | 151 Library Dr., Houma, LA 70360, (985) 876–5861. |
| New Orleans Public Library | 219 Loyola Ave., New Orleans, LA 70112, (504) 596–2570. |
| East Baton Rouge Parish Library | 7711 Goodwood Blvd., Baton Rouge, LA 70806, (225) 231–3750. |
| Jefferson Parish Library, East Bank Regional Library. | 4747 W. Napoleon Ave., Metairie, LA 70001, (504) 838–1190. |

REPOSITORIES WITH PAPER COPIES OF THE DRAFT PHASE II RP #3.2 AND MBSD DEIS EXECUTIVE SUMMARY, AND ELECTRONIC COPIES OF THE MBSD DEIS AND APPENDICES ON A USB—Continued

| Location | Address |
|---|---|
| St. Bernard Parish Library | 2600 Palmisano Blvd., Chalmette, LA 70043, (504) 279–0448. |
| St. Martin Parish Library | 201 Porter St., St. Martinville, LA 70582, (337) 394–2207. |
| Alex P. Allain Library | 206 Iberia St., Franklin, LA 70538, (337) 828–5364. |
| Vermilion Parish Library | 405 E. Victor St., Abbeville, LA 70510, (337) 893–2674. |
| Martha Sowell Utley Memorial Library | 705 W. 5th St., Thibodaux, LA 70301, (985) 447–4119. |
| Calcasieu Parish Public Library, Central Branch | 301 W. Claude St., Lake Charles, LA 70605, (337) 721–7116. |
| Iberia Parish Library | 445 E. Main St., New Iberia, LA 70560, (337) 364–7024. |
| LSU Agricultural Center, Southwest Region | 1105 West Port St., Abbeville, LA 70510, (337) 898–4335. |

**Translation Opportunities**

Vietnamese and Spanish translation will be available at all meetings. All pre-recorded presentations are in English, but are available on USACE CEMVN's project web page in English, Vietnamese, and Spanish. Anyone requiring translation in other languages should contact Ricky Boyett at *ricky.d.boyett@usace.army.mil* or 504–862–1524.

**Administrative Record**

The documents comprising the Administrative Record for the Draft Phase II RP #3.2 can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord.*

**Authority**

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: February 25, 2021.

**Carrie Diane Robinson,**

*Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 2021–04355 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA912]**

### Marine Mammals; File No. 23960

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Minnesota Zoological Gardens, 13000 Zoo Boulevard, Apple Valley, MN 55124 (Responsible Party: Tony Fisher), has applied in due form for an enhancement permit for captive Hawaiian monk seals (*Neomonachus schauinslandi*).

**DATES:** Written, telefaxed, or email comments must be received on or before April 5, 2021.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23960 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23960 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Sara Young, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Minnesota Zoological Gardens (MZG) proposes continued maintenance of two non-releasable Hawaiian monk seals for enhancement purposes. These animals would be provided with daily husbandry care and treatment for current medical conditions, routine veterinary care, and would be made available for opportunistic research. MZG will continue public awareness through education and observation, and non-intrusive husbandry and medical studies conducted incidental to the routine care and husbandry of the animals. The permit is requested for the maximum 5-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 1, 2021.

**Amy Sloan,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–04528 Filed 3–4–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA840]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments on proposed Renewal incidental harassment authorization.

**SUMMARY:** NMFS received a request from the Alaska Department of

Transportation and Public Facilities (ADOT&PF) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to activity related to Phase 1 of the two-part ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later than March 22, 2021.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.DeJoseph@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Detailed Description of Specific Activity section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency

responses will be summarized in the final notice of our decision.

The National Defense Authorization Act (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.''

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed Renewal IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

**History of Request**

On March 1, 2020, NMFS issued two, consecutive IHAs to ADOT&PF to take marine mammals incidental to Phase I and II activity related to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK (85 FR 673; January 7, 2020), effective from March 1, 2020 through February 28, 2021. On December 28, 2020, NMFS received an application for the Renewal of the initial Phase I IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial Phase 1 authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

**Description of the Specified Activities and Anticipated Impacts**

ADOT&PF will be unable to complete all of the planned work of the 2020 IHA (Phase 1) on the ferry berths in Tongass Narrows before the expiration date of February 28, 2021; therefore, they have requested a Renewal IHA to authorize take of marine mammals for the subset of the initially planned work among the four permanent project components (*i.e.,* new Revilla ferry berth, new Gravina Island Shuttle Ferry Berth and Terminal Improvements, Gravina Airport Ferry Layup Facility and the Gravina Freight) of Phase I that could not be completed. These planned construction activities would allow ADOT&PF to improve the reliability of the transportation system as well as access to Gravina Island and Ketchikan International Airport. The renewal request includes two minor changes to the activity. Specifically the number of days requested for temporary pile driving and providing for a higher maximum number of piles that may be installed per day via impact and vibratory driving (up from a max of three to eight piles). This change does not substantively affect the previous analysis or change the take estimate. Otherwise, the activity is identical to the initial IHA and includes four methods of pile installation: vibratory and impact hammers, down-hole drilling of rock sockets, and installation of tension anchors at some locations (see Tables 1 and 2). Moreover, Phase II activities will only begin upon the completion of Phase I, as stated in the 2020 IHA.

Anticipated impacts would include both Level A harassment, which will be identical to those analyzed and authorized in the 2020 IHA, and Level B harassment of marine mammals (though fewer, since from a subset of activities). ADOT&PF's request is for take of a small number of eight species of marine mammals, by Level B harassment: Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pacific white-sided dolphin (*Lagenorhynchus bliquidens*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*). Of the eight species, three (harbor seal, harbor porpoise, and Dall's porpoise) may also be taken by Level A harassment. Monitoring results of the 2020 construction activities indicate that observed exposures above Level A and Level B harassment thresholds (see monitoring report) were below the amount authorized in association with the amount of work conducted; thus, the subset of Level A and Level B harassment take remaining from that authorized under the 2019 IHA will be sufficient to cover the 2020 pile installation and removal activities.

*Detailed Description of the Activity*

As discussed earlier, this is a Renewal to complete the subset of the activity not completed under the initial IHA (85 FR 673; January 7, 2020). Due to construction schedule delays, designated work was only conducted on 56 of the estimated 144 days (reduced to 101 days of pile driving activity planned in the 2020 IHA). ADOT&PF installed 11 temporary piles (of which one was already removed) and 41 permanent piles over approximately 23 construction days in 2020. As of the submission of their Renewal request, ADOT&PF expected to drive pile for 40 more days and complete installation of (27) 24-inch trestle piles, (5) 24-inch bridge abutment piles, (15) 24-inch floating fender dolphin piles, 27 remaining sheet piles, and (10) 30-inch steel float piles for the Revilla New Ferry Berth and Upland Improvements between January 4 and February 28, 2021 under the 2020 IHA. As of February 2, 2021, the following work remains to be completed during the one-year 2021 renewal IHA: installation of 192 piles, 73 rock sockets, and 78 tension anchors and installation (38) and removal (40) of temporary piles. Although some work may be completed between February 2 and the expiration of the initial IHA (February 28), the applicant requests authorization for the work remaining as of February 2 outlined in Tables 1 and 2. The proposed Renewal would be effective for a period of one year from the date of issuance.

This Renewal request is nearly identical to that of the 2020 IHA, in that it is comprised of a subset of the work that was covered in the initial IHA, with two small changes that do not affect the previous analyses: the number of days requested for temporary pile driving and the maximum number of piles that may be driven in a day, which has been increased from three to eight.

Regarding the number of days of temporary pile driving, the initial IHA application specified 7–11 days of temporary pile driving would be needed to complete all projects during Phase 1. The temporary pile driving at the Revilla New Ferry Berth required 7

days, instead of the 2–3 days listed in the IHA application, because of subsurface boulders and weather conditions. It is expected that more days than initially anticipated will be needed to complete the remaining temporary pile driving; therefore, the renewal requests 5–8 days of temporary pile installation (the original needs of the remaining three component projects) to complete the work, which is still fewer than included in the initial IHA.

The mitigation and monitoring will be identical to that of the 2020 IHA, with the exception of enlarged shutdown zones that reflect the modified Level A harassment zones, which have changed because of the increased number of piles that may potentially be driven concurrently. The shutdown zone for humpback whales will equal that of the Level A zone, while the pile driving shutdown zones for all other hearing groups are greater than Level A zones. A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed (84 FR 34134; July 17, 2019) and final IHAs (85 FR 673; January 7, 2020) for the 2020 authorization. All documents associated with the 2020 IHA (*i.e.,* the IHA application, proposed IHA, final IHA, public comments, monitoring reports, etc.) can be found on NMFS's website, *https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements*.

TABLE 1—PERMANENT PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION DURING 2021 RENEWAL

| Project component pile type | Number of piles | Number of rock sockets | Number of tension anchors | Average vibratory duration per pile (minutes) | Average drilling duration for rock sockets per pile (minutes) | Impact strikes per pile | Average duration (minutes) per pile for vibratory | Average piles per day (range) | Days of installation |
|---|---|---|---|---|---|---|---|---|---|
| **Revilla New Ferry Berth and Upland Improvements** | | | | | | | | | |
| 24″ Pile Diameter | 15 | 0 | 12 | 30 | N/A | 200 | 30 | 1.5 (1–3) | 36 |
| 30″ Pile Diameter | 2 | 0 | 14 | 30 | N/A | 200 | 30 | 1.5 (1–3) | 12 |
| 30″ Sheet Pile | 0 | Completed | | | | | | | |
| **New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements** | | | | | | | | | |
| 24″ Pile Diameter | 65 | 52 | 25 | 15 | 120 | 50 | 15 | 1.5 (1–3) | 44 |
| 30″ Pile Diameter | 8 | 4 | 4 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 5 |
| 27.6″ Sheet Pile | 74 | N/A | N/A | 15 | N/A | N/A | 15 | 6 (6–12) | 12 |
| **Gravina Airport Ferry Layup Facility** | | | | | | | | | |
| 18″ Pile Diameter | 3 | 0 | 0 | 15 | N/A | 50 | 15 | 1.5 (1–3) | 2 |
| 30″ Pile Diameter | 12 | 12 | 10 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 8 |
| **Gravina Freight Facility** | | | | | | | | | |
| 20″ Pile Diameter | 6 | 0 | 6 | 15 | N/A | 50 | 15 | 1.5 (1–3) | 4 |
| 24″ Pile Diameter | 3 | 3 | 3 | | 120 | 50 | 15 | 1.5 (1–3) | 2 |
| 30″ Pile Diameter | 4 | 2 | 4 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 3 |
| PHASE 1 Total | 192 | 73 | 78 | | | | | | 128 [a] |

a. Identically to Phase I, the assumption that two pieces of equipment are to be used concurrently on 30 percent of planned driving days reduces in-water construction to 90 days.

TABLE 2—NUMBERS OF TEMPORARY PILES PLANNED TO BE INSTALLED AND REMOVED FOR EACH PROJECT COMPONENT IN 2021

| Project component | Number of temporary piles | Average vibratory duration per pile for installation (minutes) | Average vibratory duration per pile for removal (minutes) | Days of installation | Days of removal | Piles per day |
|---|---|---|---|---|---|---|
| Revilla New Ferry Berth and Upland Improvements. | 8 | 0-currently installed. | 15 | 0 | 2 to 3 | 4 to 6 |
| New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements. | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6 |
| Gravina Airport Ferry Layup Facility | 8 | 15 | 15 | 1 to 2 | 0.75 to 2 | 4 to 6 |
| Gravina Freight Facility | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6 |
| Total | 40 | 480 (8 hrs) | 600 (10 hrs) | 5–11 | 7–11 | |

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events,

and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. Updated stock abundances were used in this analysis and take estimation calculations per the 2020 SARs.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat. The applicant submitted the required preliminary monitoring results and the monitoring to date does not contradict the original take calculations or indicate impacts of a scale or nature not previously analyzed or authorized.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA, with the exception of the fact that there are fewer days of operation since this activity is a subset of that covered in the initial IHA. Only the maximum number of piles that may be installed per day via impact and vibratory driving is increasing from a maximum of three to eight piles. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes (Level B harassment will be fewer, since from a subset of activities), which are indicated below in Table 3.

The potential installation of up to eight piles per day (from three) increases the potential maximum radius of the Level A harassment zone from 550 to 1010 meters (m) for low-frequency, 650 to 1200 m for high-frequency, and 300 to 550 m for phocid pinnipeds hearing groups when driving a 30-inch pile. However, the likelihood of marine mammals entering these zones and staying for a duration sufficient to incur permanent threshold shift is considered low, and the rationale and take estimates presented in the initial proposed IHA (which were based on the likelihood of an individual or group entering the area some number of times during the activity, as opposed to being based on a density) remain applicable. Further, the detections reported in the preliminary monitoring report do not suggest that the methods or estimated takes need to be modified, even in consideration of the potentially larger Level A harassment zones.

TABLE 3—PROPOSED TAKE NUMBERS TO BE AUTHORIZED BY SPECIES/STOCK

| Species | DPS/stock | Estimated number of exposures to level B harassment | Estimated number of exposures to level A harassment | Total estimated exposures (level A and level B harassment) |
|---|---|---|---|---|
| Steller sea lion | Eastern DPS | 1,800 | 0 | 1,800 |
| Harbor seal | Clarence Strait | 765 | 18 | 783 |
| Harbor porpoise | Southeast Alaska | 109 | 15 | 124 |
| Dall's porpoise | Alaska | 317 | 15 | 332 |
| Pacific white-sided dolphin | North Pacific | 92 | 0 | 92 |
| Killer whale | Alaska Resident | 144 | 0 | 144 |
| | Northern Resident | | | |
| | West Coast Transient | | | |
| Humpback whale [1] | Hawaii DPS | 238 | 0 | 238 |
| | Mexico DPS | 15 | 0 | 15 |
| Minke whale | Alaska | 7 | 0 | 7 |

**Note:** DPS = distinct population segment.
[1] Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade *et al.* 2016).

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA (84 FR 34134; July 17, 2019) remains accurate with the minor modifications to the shutdown zones to reflect the revised Level A harassment zones. As with the initial IHA, pile driving shutdown zones greater than Level A Harassment zones will be implemented for all hearing groups (except for humpback whales, for which the shutdown zone will be equal to the Level A harassment zone). As noted previously, Level A harassment zones will increase for 24 and 30-inch impact driving in low-frequency, high-frequency, and Phocid pinnipeds hearing groups and the shutdown zones have been enlarged accordingly to encompass them (rounded up to the nearest 10 m, per NMFS standard practice, a slight change from the initial IHA, which included rounding to the nearest 50 m, as proposed by ADOT&PF). We have considered these changes to shutdown zones, and they do not change our determination that the proposed measures will affect the least practicable adverse impact on all affected species or stocks and their habitat.

The following measures are proposed for this renewal:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join

the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

• For in-water heavy machinery work other than pile driving/removal and drilling (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);

• Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;

• For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and drilling will shut down immediately when the animals are sighted;

• In the event that more than one contractor is working at the same time, they will maintain radio or cellular coordination in order to coordinate pile installation and removal and provide adequate monitoring by protected species observers; and

• If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

*Establishment of Shutdown Zone for Level A Harassment*—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type, marine mammal hearing group, and in the case of impact pile driving, additional details about the activity including the expected number of pile strikes required, size of the pile, and number of piles to be driven during that day (See Table 4). The placement of protected species observers (PSOs) during all pile driving, pile removal, and drilling activities will ensure that the entire shutdown zone is visible during pile installation.

The shutdown zones shown in Table 4 apply when a single piece of equipment is in use. In addition, ADOT&PF will implement a shutdown zone of 100 m for each vibratory hammer on days when it is anticipated that multiple vibratory hammers will be used. The ADOT&PF will also implement a shutdown zone of 100 m for each down-the-hole (DTH) drill on days when it is anticipated that two DTH drills will be used.

TABLE 4—SHUTDOWN ZONES DURING USE OF A SINGLE PIECE OF EQUIPMENT

| Activity | Pile size (inches) | Minutes per pile or strikes per pile | Piles installed or removed per day | Level B harassment isopleth (m) | Shutdown distances (m) | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | LF | MF | HF | PW | OW |
| Vibratory Installation | 30 | 30 min | 8 | 6,310 | 50 | | | | |
| Vibratory Removal | 24, 18 | 30 min | 8 | 5,420 | | | | | |
| | 27.6 sheet pile, 30.3 sheet pile | 15 min | 10 | 4,650 | | | | | |
| | 24, 16 | 30 min | 5 | 5,420 | | | | | |
| Drilling Rock Sockets | 30 | 180 min | 3 | 12,030 | 70 | 50 | 60 | | |
| | 24, 18 | 120 min | 3 | | 60 | 50 | | | |
| Impact Installation | 30 | 50 strikes | 3 | 2,160 | 250 | 50 | 250 | 150 | 50 |
| | | | 2 | | 200 | | 200 | 100 | |
| | | | 1 | | 100 | | 150 | 100 | |
| | | 200 strikes | 8 | | 1010 | | 1200 | 550 | |
| | | | 3 | | 550 | | 650 | 300 | |
| | | | 2 | | 400 | | 500 | 250 | |
| | | | 1 | | 300 | | 300 | 150 | |
| | 24 | 50 strikes | 3 | 1,000 | 150 | | 150 | 100 | |
| | | | 2 | | 100 | | 150 | 50 | |
| | | | 1 | | 100 | | 100 | 50 | |
| | | 200 strikes | 8 | | 550 | | 650 | 300 | |
| | | | 3 | | 300 | | 350 | 200 | |
| | | | 2 | | 250 | | 300 | 150 | |
| | | | 1 | | 150 | | 200 | 100 | |
| | 18 | 50 strikes | 8 | | 220 | | 260 | 120 | |
| | | | 3 | | 150 | | 150 | 100 | |
| | | | 2 | | 100 | | 150 | 50 | |
| | | | 1 | | 100 | | 100 | 50 | |

*Establishment of Monitoring Zones for Level B Harassment*—ADOT&PF will establish monitoring zones, based on the Level B harassment zones which are areas where sound pressure levels (SPLs) are equal to or exceed the 160 dB rms (decibel root mean square) threshold for impact driving and the 120 dB rms threshold during vibratory driving, vibratory removal, and drilling. Monitoring zones provide utility for observing marine mammals by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. On days and at times when a single piece of pile installation or removal equipment will be used, the Level B harassment zone will be monitored and implemented according to pile size, type, and installation method as outlined. The largest Level B harassment zone extends to a radius of 12,023 m in at least one direction up or down Tongass Narrows when a single piece of driving equipment is being utilized, making it impracticable for the PSOs to consistently view the entire harassment area. Due to this, detections of exposures above the Level B harassment thresholds will be recorded

and takes will be estimated based upon the number of these observed detections and the percentage of the Level B harassment zone that was not visible.

When two or more pieces of equipment are used simultaneously, and the noise they produce is not continuous or is a combination of continuous and impulsive, Table 4, above, will be followed to define the Level A and Level B harassment monitoring zones for each piece of equipment.

On days when multiple pieces of equipment that produce continuous noise are used simultaneously, source levels will be determined as shown in Table 9, Table 10, Table 11, and Table 12 of the initial final IHA (85 FR 673; January 7, 2020). The calculated source level will be used to determine the Level B harassment monitoring zones in accordance with values depicted in Table 14 of the initial final IHA (85 FR 673; January 7, 2020). The potential installation of up to eight piles per day (from three) will not affect the Level B harassment monitoring zones calculations as the maximum number of simultaneous pile installation activities (three) has not changed from the initial final IHA. The assumption stands that a minimum of two pieces of equipment will be used on 30 percent of construction days; therefore, decreasing the total number of pile installation days from 128 to 90 days as well as the number of days when the Level B harassment zone size could exceed 12,023 m. The increase to eight zones will require that daily activity combinations be planned appropriately by starting big and decreasing throughout the day.

*Soft Start*—The use of a soft-start procedure provides additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities. If a marine mammal is present within the Level A harassment zone, soft start will be delayed until the animal leaves the Level A harassment zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the Level A harassment zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a take by Level B harassment will be recorded. Soft start up may occur when these species are in the Level B harassment zone, whether they enter the Level B harassment zone from the Level A harassment zone or from outside the project area.

*Pre-Activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the PSO will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, piling activities may begin and take by Level B harassment will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

*Timing Restrictions*—ADOT&PF plans to implement the Essential Fish Habitat (EFH) Conservation Recommendations developed by NMFS. These include a no in-water work timing window for three project components, Revilla New Ferry Berth and Upland Improvements, Gravina Airport Ferry Layup Facility, and Revilla Refurbish Existing Ferry Berth Facility, with no in-water work occurring between March 1 and June 15. Implementation of this timing window will likely reduce exposure/take of marine mammals to levels below what has been predicted, because some project locations will be able to install piles when other locations may not.

During Phase 2 in-water pile installation and removal on the Revilla Island side of the Narrows will be limited to no more than 2 hours that shall not coincide with in-water pile installation/removal activities on Gravina Island.

Based on our evaluation of the applicant's required measures NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

*Visual Monitoring*

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

There will be at least one PSO present at or near each construction site during in-water pile installation and removal so that all Level A harassment zones and shutdown zones are monitored by a dedicated PSO at all times. PSOs will not perform duties for more than 12

hours in a 24-hour period. PSOs would be land-based observers, positioned at the best practical vantage points. At least one other PSO for each active worksite will begin at the central worksite and travel along the Tongass Narrows until they have reached the edges of the monitoring zones, based on the Level B harassment zones. These PSOs will then monitor the edges of the monitoring zone and as much as possible of the rest of the monitoring zone, looking for animals entering the Level B harassment zone. If waters exceed a sea state that restricts the PSO's ability to make observations within the Level A harassment zones (*e.g.,* excessive wind or fog), pile installation and removal must cease. Pile driving must not be re-initiated until the entire relevant Level A harassment zones are visible.

When combinations of one DTH drill with a vibratory hammer, two DTH drills, or two DTH drills with a vibratory hammer are used simultaneously, creating a Level B harassment zone that is greater than 12,023 m in radius, one additional PSO (at least two total) will be stationed at the northernmost land-based location at the entrance to Tongass Narrows. One PSO will focus on Tongass Narrows, specifically watching for marine mammals that could approach or enter Tongass Narrows and the project area. The second PSO will look out into Clarence Strait, watching for marine mammals that could swim through the ensonified area. This monitoring requirement for concurrent driving scenarios was not included in the proposed IHAs. No additional PSOs will be required at the southern-most monitoring location because the Level B harassment zones are truncated to the southeast by islands, which prevent propagation of sound in that direction beyond the confines of Tongass Narrows. Takes by Level B harassment will be recorded by PSOs and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

With this configuration, PSOs can have a full view of the Level A harassment zone and awareness of as much of the Level B harassment zone as possible. This monitoring will provide information on marine mammal occurrence within Tongass Narrows and how these marine mammals are impacted by pile installation and removal.

As part of monitoring, PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Each construction Contractor managing an active construction site and on-going in-water pile installation or removal will provide qualified, independent PSOs for their specific contract. The ADOT&PF environmental coordinator for the project will implement coordination between or among the PSO contractors. It will be a required component of their contracts that PSOs coordinate, collaborate, and otherwise work together to ensure compliance with project permits and authorizations. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.,* not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute experience or training for education;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

*Reporting*

NMFS is requiring that ADOT&PF submit a preliminary marine mammal monitoring report for the work covered under the initial IHA and this renewal at least 4 months prior to beginning the work covered under their second IHA, referred to as Phase II (85 FR 673; January 7, 2020). This preliminary report must contain all items that would be included in the draft final report, listed below under ''Reporting''. This will allow NMFS to assess the impact of the activities relative to the analysis presented here, and modify the IHA for Phase II if the preliminary monitoring report shows unforeseen impacts on marine mammals in the area. If needed, NMFS will publish an amended proposed IHA, describing any changes but referencing the original IHA for Phase II, and include an opportunity for the public to comment on the amended authorization.

In addition to the preliminary monitoring report discussed above, separate draft marine mammal monitoring reports must be submitted to NMFS within 90 days after the completion of both Phase 1 and Phase 2 pile driving, pile removal, and drilling activities. These reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins and ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;

• An estimate of total take based on proportion of the monitoring zone that was observed; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, ADOT&PF shall report the incident to the Office of Protected Resources, NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

**Preliminary Determinations**

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the minor changes discussed above, as well as stock abundance information. The estimated abundance of the West Coast Transient and Northern Resident Killer whale stocks and Steller sea lion Eastern U.S. stock have increased slightly, whereas, the harbor seal, Clarence Strait stock decreased slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS' Alaska Regional Office.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of IHAs to ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales. Finally, the regional office determined that the renewal request (*i.e.,* the minor changes to the maximum number of piles per day) will not alter take or require re-initiation of the consultation.

Dated: March 1, 2021.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–04525 Filed 3–4–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA914]**

### Marine Mammals; File No. 25498

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Titan Productions, Limited, 51–55 Whiteladies Road Bristol, BS8 2LY, United Kingdom (Responsible Party: Lucy Meadows), has applied in due form for a permit to conduct commercial or educational photography of California sea lions (*Zalophus californianus*), gray whales (*Eschrichtius robustus*), and killer whales (*Orcinus orca*).

**DATES:** Written, telefaxed, or email comments must be received on or before April 5, 2021.

**ADDRESSES:** These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25498 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Carrie Hubard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to film the natural behaviors of California sea lions, gray whales, and killer whales as part of a wildlife documentary about the marine life along the Pacific Coast. Filmmakers would annually target up to 910 California sea lions in California, 408 gray whales in California, 1,200 killer whales in Alaska, and 405 killer whales in California. Filming would occur topside from the vessel, underwater, and via an unmanned aircraft system. Up to 200 bottlenose dolphins (*Tursiops truncatus*), 75 Dall's porpoise (*Phocoenoides dalli*), 60 harbor seals (*Phoca vitulina*), 200 short-beaked common dolphins (*Delphinus delphis*), 200 long-beaked common dolphins (*Delphinus capensis*), 60 Northern fur seals (*Callorhinus ursinus*), 250 Pacific white-side dolphins (*Lagenorhynchus obliquidens*), and 200 Risso's dolphins (*Grampus griseus*) could be unintentionally harassed annually during filming. The film will be part of a 10-episode natural history television series broadcast on a major subscription video on demand platform and will be accessible to audiences worldwide. To allow for scheduling changes, the permit would be valid until December 31, 2022.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 1, 2021.

**Amy Sloan,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–04562 Filed 3–4–21; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to the procurement list.

**SUMMARY:** The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Comments must be received on or before:* April 4, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Service(s)*

*Service Type:* Administrative and HR Support Service
*Mandatory for:* Military Sealift Command (MSC), MSC-Norfolk, Norfolk, VA
*Designated Source of Supply:* VersAbility Resources, Inc., Hampton, VA
*Contracting Activity:* Dept of the Navy, MSC Norfolk

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations.*

[FR Doc. 2021–04637 Filed 3–4–21; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the procurement list.

**SUMMARY:** This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to and deleted from the Procurement List:* April 4, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On 12/4/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

*End of Certification*

Accordingly, the following service(s) are added to the Procurement List:

*Service(s)*

*Service Type:* Facility Support Services
*Mandatory for:* National Park Service, National Capital Area, Multiple Locations, Washington, DC
*Designated Source of Supply:* Portco, Inc., Portsmouth, VA
*Contracting Activity:* National Park Service, NCR Regional Contracting (30000)

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See U.S.C. 553(d)(3). This addition to the Committee's Procurement List is effectuated because of the expiration of the National Park Service's Facility Support Services contract for the National Capital Area, Washington, DC. The federal customer contacted, and has worked diligently with the AbilityOne Program to fulfill this Service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the National Park Service will refer its business elsewhere, this addition must be effective on March 21, 2021, ensuring timely execution for a start date while still allowing 17 days for comment. Pursuant to its own regulation, 41 CFR 51–2.4, the Committee determined that no exists on the current contractor. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on December 4, 2021, and did not receive any comments from any interested persons, including from the incumbent contractor. The addition will not create a public hardship and has limited effect on the public at large, but rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne Program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

### Deletions

On 1/29/2021, the Committee for Purchase From People Who Are Blind

or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

*End of Certification*

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):* 5855–00–125–0713—Strap Assembly, Night Vision
*Designated Source of Supply:* Cambria County Association for the Blind and Handicapped, Johnstown, PA
*Contracting Activity:* DLA Aviation, Richmond, VA
*NSN(s)—Product Name(s):* 4240–01–441–0562—Head Harness (without Mask)
*Contracting Activity:* W4GG HQ US Army TACOM, Rock Island, IL
*NSN(s)—Product Name(s):* 3990–00–892–4394—Pallet, Material Handling
*Designated Source of Supply:* Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI; Knox County Association for Remarkable Citizens, Inc., Vincennes, IN
*Contracting Activity:* DLA Troop Support, Philadelphia, PA
*NSN(s)—Product Name(s):*
5340–01–118–6678—Clamp, Loop, CRES, 3/4″ Loop x 1/2″ wide
5340–01–252–4644—Clamp, Loop, CRES, 14/16″ loop x 1/2″ wide
*Designated Source of Supply:* Skookum Educational Programs, Bremerton, WA
*Contracting Activity:* DLA Troop Support, Philadelphia, PA

*Service(s)*

*Service Type:* Mail Management Support Service
*Mandatory for:* US Navy, Official Mail Centers Carderock, West Bethesda, MD
*Designated Source of Supply:* NewView Oklahoma, Inc., Oklahoma City, OK
*Contracting Activity:* Dept of the Navy, NAVSUP FLT Log CTR Norfolk
*Service Type:* Acquisition Support Services
*Mandatory for:* DCMA Headquarters, Alexandria, VA
*Designated Source of Supply:* Virginia Industries for the Blind, Charlottesville, VA
*Contracting Activity:* Defense Contract Management Agency (DCMA), Defense Contract Management Agency
*Service Type:* Administrative and Professional Support Services
*Mandatory for:* Executive Office of the President, Washington, DC
*Designated Source of Supply:* Columbia Lighthouse for the Blind, Washington, DC
*Contracting Activity:* Executive Office of the President
*Service Type:* Customer Service Representatives
*Mandatory for:* Fleet and Industrial Supply Center: SERVMART Division, Norfolk, VA
*Designated Source of Supply:* Virginia Industries for the Blind, Charlottesville, VA
*Contracting Activity:* General Services Administration, FPDS Agency Coordinator
*Service Type:* Customer Service Representatives
*Mandatory for:* GSA, Northwest Arctic Region: 400 15th Street SW, Auburn, WA
*Designated Source of Supply:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
*Contracting Activity:* General Services Administration, FPDS Agency Coordinator
*Service Type:* Switchboard Operation
*Mandatory for:* Harry S. Truman Memorial Veterans Hospital, Columbia, MO
*Designated Source of Supply:* Alphapointe, Kansas City, MO
*Contracting Activity:* Veterans Affairs, Department of, NAC

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations.*

[FR Doc. 2021–04636 Filed 3–4–21; 8:45 am]

BILLING CODE 6353–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Disaster Response Cooperative Agreement Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS, operating as AmeriCorps) has submitted a public information collection request (ICR) entitled Application Package for Disaster Response Cooperative Agreement (DRCA) for review and approval in accordance with the Paperwork Reduction Act.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 5, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Luke Wigle, at 202–409–4791 or by email to *lwigle@cns.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;
- 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 November 12, 2020 at Vol. FR Pages 71887–71888. This comment period ended January 11, 2021. No public comments were received from this Notice.

*Title of Collection:* CNCS Disaster Response Cooperative Agreements.

*OMB Control Number:* 3045–0133.

Type of Review: Renewal.

*Respondents/Affected Public:* Business and Organizations.

*Total Estimated Number of Annual Responses:* 100.

*Total Estimated Number of Annual Burden Hours:* 200.

*Abstract:* AmeriCorps seeks renewal of the current information collection pursuant to the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*) and the National and Community Service Act of 1990, (42 U.S.C. 12501 *et seq.*) The information collected will be used to help AmeriCorps more effectively utilize its deployable resources to meet the needs of disaster affected communities. A better understanding of the participating programs will allow AmeriCorps to match the capabilities of the programs to the needs of the communities and will allow better asset mapping and resource typing. Additionally, the information collected will allow AmeriCorps to conduct better outreach to interested programs by providing them with more information about AmeriCorps disaster procedures, reimbursement requirements, and support services offered.

The revisions are intended to streamline the application process and ensure interested programs meet the appropriate programmatic and fiscal requirements to successfully execute disaster response activities. Additionally, the supporting forms will help AmeriCorps identify and deploy programs more effectively and efficiently, matching the capabilities of the programs to the needs of the communities requesting assistance.

The additional tools and forms under the DRCA will allow for effective information collection during a disaster event as well as assess the capacity of all DRCA programs throughout the year.

The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2021.

Dated: February 26, 2021.

**Jacob Sgambati,**

*Acting Deputy Director, National Civilian Community Corps.*

[FR Doc. 2021–04604 Filed 3–4–21; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2020–SCC–0185]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; College Affordability and Transparency Explanation Form (CATEF) 2021–2023

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before April 5, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Freddie Cross, 202–453–7224.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* College Affordability and Transparency Explanation Form (CATEF) 2021–2023.

*OMB Control Number:* 1840–0822.

*Type of Review:* A revision of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 544.

*Total Estimated Number of Annual Burden Hours:* 1,251.

*Abstract:* The Office of Postsecondary Education (OPE) is seeking a renewed three-year clearance for the College Affordability and Transparency Explanation Form (CATEF) data collection. OPE has collected this information since 2011–12 and the collection of information through CATEF is required by § 132 of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1015a with the goal of increasing the transparency of college tuition prices for consumers. This submission is for the 2021–22, 2022–23, and 2023–24 collection years. CATEF collects follow-up information from institutions that appear on the tuition and fees and/or net price increase College Affordability and Transparency Center (CATC) Lists for being in the five percent of institutions in their institutional sector that have the highest increases, expressed as a percentage change, over the three-year time period for which the most recent data are available. The information collected through CATEF is used to write a summary report for Congress which is also posted on the CATC website (accessible through the College Navigator).

Minor changes are being requested to the data collection instruments that were approved in November 2012 (OMB# 1840–0822 v.2). We will continue to use two CATEF forms: (1) Net Price and (2) Tuition and Fees. Analysis of past open-ended data questions in both surveys revealed that the open-ended items could be replaced with multi-choice items, resulting in burden reduction of 812 hours.

Dated: March 1, 2021.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–04504 Filed 3–4–21; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–216–E]**

### Application To Export Electric Energy; TransAlta Energy Marketing (U.S.) Inc.

**AGENCY:** Office of Electricity, Department of Energy.

**ACTION:** Notice of application.

**SUMMARY:** TransAlta Energy Marketing (U.S.) Inc. (Applicant or TEMUS) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

**DATES:** Comments, protests, or motions to intervene must be submitted on or before April 5, 2021.

**ADDRESSES:** Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

**FOR FURTHER INFORMATION CONTACT:** Matt Aronoff, 202–586–5863, *matthew.aronoff@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 3, 2021, TEMUS filed an application with DOE (Application or App.) to transmit electric energy from the United States to Canada for a term of five years. TEMUS states that it ''is a Delaware corporation with its principal place of business [in] Centralia, Washington.'' App. at 1. TEMUS further represents that it ''is an indirect subsidiary of TransAlta Corporation,'' which is a Canada corporation headquartered in Calgary, Alberta.'' *Id.* at 2. TEMUS represents that it ''does not own any electric generation or transmission facilities and, as a power marketer, does not hold a franchise or service territory or native load obligation.'' *Id.* at 7.

TEMUS further states that it ''will export electricity purchased from electric utilities, federal power marketing agencies, qualifying cogeneration and small power production facilities, independent power producers, and other sellers.'' App. at 7. TEMUS contends that its proposed transmission would not impair the sufficiency of the electric supply within the United States, and that its proposed transmission would neither impede nor tend to impede the sufficiency of electric supply within the United States. *See* App. at 8.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning TEMUS's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–216–E. Additional copies are to be provided directly to Daryck Riddell, 110–12th Avenue SW, Calgary, Alberta T2P 2M1, Canada, *Daryck_Riddell@transalta.com;* Steve Lincoln, 1155 SW Morrison Street, Suite 200, Portland, OR 97205, *Steve_Lincoln@transalta.com;* Michael W. Brooks, 2001 M Street NW, Suite 900, Washington, DC 20036, *michael.brooks@bracewell.com;* and Tracey L. Bradley, 2001 M Street NW, Suite 900, Washington, DC 20036, *tracey.bradley@bracewell.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matt Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on March 1, 2021.

**Christopher Lawrence,**

*Management and Program Analyst, Energy Resilience Division, Office of Electricity.*

[FR Doc. 2021–04643 Filed 3–4–21; 8:45 am]

**BILLING CODE 6450–01–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 Number:* PR21–32–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Tariff filing per 284.123(b), (e)+(g): Revisions to Appendix A of Statement of Operating Conditions 2021 to be effective 1/1/2021.
*Filed Date:* 2/24/2021.
*Accession Number:* 202102245065.
*Comments Due:* 5 p.m. ET 3/17/2021.
*284.123(g) Protests Due:* 5 p.m. ET 4/26/2021.

*Docket Numbers:* RP21–512–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* Enable Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Filing—March 1, 2021 GEP 1011325 to be effective 3/1/2021 under RP21–512.
*Filed Date:* 02/24/2021.
*Accession Number:* 20210224–5119.
*Comment Date:* 5 p.m. ET 3/8/2021.

*Docket Numbers:* RP21–513–000.
*Applicants:* Viking Gas Transmission Company.
*Description:* Viking Gas Transmission Company submits tariff filing per 154.204: Annual LMCRA—Spring 2021 to be effective 4/1/2021 under RP21–513.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5003.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–514–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* Guardian Pipeline, L.L.C. submits tariff filing per 154.204: EPCR Semi-Annual Adjustment—Spring 2021 to be effective 4/1/2021 under RP21–514.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5012.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–515–000.
*Applicants:* Midwestern Gas Transmission Company.
*Description:* Midwestern Gas Transmission Company submits tariff filing per 154.204: Annual Fuel Retention Adjustment Percentage—2021 Rate to be effective 4/1/2021 under RP21–515.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5029.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–516–000.

*Applicants:* Sabine Pipe Line LLC.
*Description:* Sabine Pipe Line LLC submits tariff filing per 154.204: Normal section 5 rates change 2021 to be effective 4/1/2021 under RP21–516.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5033.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–517–000.
*Applicants:* Viking Gas Transmission Company.
*Description:* Viking Gas Transmission Company submits tariff filing per 154.204: Semi-Annual Fuel and Loss Retention Adjustment—Spring 2021 to be effective 4/1/2021 under RP21–517.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5044.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–518–000.
*Applicants:* Golden Pass Pipeline LLC.
*Description:* Golden Pass Pipeline LLC submits tariff filing per 154.203: Golden Pass Pipeline LLC 2020 Operational Purchases and Sales Report.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5049.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–519–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.204: Non-Conforming Agreements (APS) to be effective 4/1/2021 under RP21–519.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5063.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–520–000.
*Applicants:* Northwest Pipeline LLC.
*Description:* Northwest Pipeline LLC submits tariff filing per 154.204: 2021 Summer Fuel Filing to be effective 4/1/2021 under RP21–520.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5119.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–521–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* Rockies Express Pipeline LLC submits tariff filing per 154.204: REX 2021–02–25 Negotiated Rate Agreement Amendments to be effective 3/9/2021 under RP21–521.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5126.
*Comment Date:* 5 p.m. ET 3/4/2021.

*Docket Numbers:* RP21–522–000.
*Applicants:* Equitrans, L.P.
*Description:* Equitrans, L.P. submits tariff filing per 154.204: 3–1–2021 Formula-Based Negotiated Rates to be effective 3/1/2021 under RP21–522.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5163.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–523–000.
*Applicants:* Millennium Pipeline Company, LLC.
*Description:* Millennium Pipeline Company, LLC submits tariff filing per 154.203: Annual Report of Operational Transactions 2021.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5176.
*Comment Date:* 5 p.m. ET 3/9/2021.

*Docket Numbers:* RP21–524–000.
*Applicants:* Millennium Pipeline Company, LLC.
*Description:* Millennium Pipeline Company, LLC submits tariff filing per 154.204: RAM 2021 to be effective 4/1/2021.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5178.
*Comment Date:* 5 p.m. ET 3/9/2021.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: February 26, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04578 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* EC21–56–000.
*Applicants:* Duke Energy Indiana, LLC, GIC Infra Holdings Pte. Ltd.
*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Duke Energy Indiana, LLC, et al.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5244.
*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* EC21–57–000.
*Applicants:* Exelon Generation Company, LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Exelon Generation Company, LLC.
*Filed Date:* 02/25/2021.
*Accession Number:* 20210225–5246.
*Comment Date:* 5:00 p.m. ET 3/18/2021.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21–95–000.
*Applicants:* Fish Springs Ranch Solar, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Fish Springs Ranch Solar, LLC under EG21–95.
*Filed Date:* 02/11/2021.
*Accession Number:* 20210211–5215.
*Comment Date:* 5:00 p.m. ET 3/4/2021.

*Docket Numbers:* EG21–96–000.
*Applicants:* Quitman II Solar, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Quitman II Solar, LLC.
*Filed Date:* 02/17/2021.
*Accession Number:* 20210217–5153.
*Comment Date:* 5:00 p.m. ET 3/10/2021.

*Docket Numbers:* EG21–97–000.
*Applicants:* Iris Solar, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Iris Solar, LLC under EG21–97.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5300.
*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* EG21–98–000.
*Applicants:* St. James Solar, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of St. James Solar, LLC under EG21–98.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5303.
*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–1531–005; ER10–1514–006; ER13–343–012; ER13–342–016; ER16–700–006; ER16–701–005.
*Applicants:* CPV Fairview, LLC, CPV Keenan II Renewable Energy Company,

LLC, CPV Maryland, LLC, CPV Shore, LLC, CPV Towantic, LLC, CPV Valley, LLC.

*Description:* Notice of Change in Status of CPV Fairview, LLC, et al.

*Filed Date:* 02/24/2021.

*Accession Number:* 20210224–5208.

*Comment Date:* 5:00 p.m. ET 3/17/2021.

*Docket Numbers:* ER18–1639–008.

*Applicants:* Constellation Mystic Power, LLC.

*Description:* Constellation Mystic Power, LLC submits tariff filing per 35: Third Compliance Filing to be effective 6/1/2022.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5181.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–783–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.17(b): 3330R3 City of Nixa, Missouri NITSA NOA to be effective 12/1/2020.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5080.

*Comment Date:* 5:00 p.m. ET 3/19/2021.

*Docket Numbers:* ER21–1140–001.

*Applicants:* Public Service Company of Colorado.

*Description:* Public Service Company of Colorado submits tariff filing per 35.17(b): 2021–02–25 Western EIM Energy Imbalance Subentity Agrmt-Amnd-0.0.1 to be effective 1/20/2021.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5120.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1177–000.

*Applicants:* Crossett Solar Energy, LLC.

*Description:* Supplement to February 19, 2021 Crossett Solar Energy, LLC tariff filing.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5243.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1206–000.

*Applicants:* Keota Solar, LLC.

*Description:* Petition for Limited Waiver or Alternative Remedial Relief, Request for Expedited Consideration and Shortened Comment Period of Keota Solar, LLC.

*Filed Date:* 02/24/2021.

*Accession Number:* 20210224–5176.

*Comment Date:* 5:00 p.m. ET 3/17/2021.

*Docket Numbers:* ER21–1209–000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: MAIT submits Seven ECSAs, Nos. 5387, 5774, 5917, 5918, 5919, 5920 and 5921 to be effective 4/27/2021.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5143.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1210–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation of WMPA, SA No. 5153; Queue No. AD1–157 re: withdrawal to be effective 3/27/2021.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5157.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1211–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM submits Revisions to PJM Tariff re: Surety Bonds to be effective 5/1/2021.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5187.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1212–000.

*Applicants:* Pocahontas Prairie Wind, LLC.

*Description:* Notice of Cancellation of Market Based Rate Tariff of Pocahontas Prairie Wind, LLC.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5247.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

*Docket Numbers:* ER21–1213–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–02–26_SA 3487 ATC-Badger State Solar 1st Rev GIA (J818) to be effective 2/17/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5115.

*Comment Date:* 5:00 p.m. ET 3/19/2021.

*Docket Numbers:* ER21–1214–000

*Applicants:* Midcontinent Independent System Operator.

*Description:* Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–02–26_SA 3258 Big Rivers Electric-Clover Creek Solar 1st Rev GIA (J753) to be effective 2/19/2021 under ER21–1214 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5177.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1215–000.

*Applicants:* Assembly Solar I, LLC.

*Description:* Assembly Solar I, LLC submits tariff filing per 35.12: Reactive Power Compensation Filing to be effective 4/27/2021 under ER21–1215 Filing Type: 400.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5185.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1216–000.

*Applicants:* Midcontinent Independent System Operator.

*Description:* Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–02–26_SA 3259 Big Rivers Electric-Merino Solar LLC 1st Rev GIA (J762) to be effective 2/19/2021 under ER21–1216 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5197.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1217–000.

*Applicants:* Iris Solar, LLC.

*Description:* Iris Solar, LLC. submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 4/15/2021 under ER21–1217 Filing Type: 400.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5220.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1218–000.

*Applicants:* St. James Solar, LLC.

*Description:* St. James Solar, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 4/15/2021 under ER21–1218 Filing Type: 400.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5226.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1219–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Revisions to Formula Rate: CGI Depreciation Rates to be effective 4/28/2021 under ER21–1219 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5235.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1220–000.

*Applicants:* New York Independent System Operator, In, Niagara Mohawk Power Corporation.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Joint TPIA 2472 among the NYISO, NMPC and HQUS re: Cedar Rapids Intertie to be effective 2/11/2021 under ER21–1220 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5249.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1221–000.

*Applicants:* New York Independent System Operator, In.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: EPC agreement 2476 among NYISO, HQ and APGI re: Cedar Rapids Intertie to be effective 2/11/2021 under ER21–1221 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5279.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1222–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: First Revised ISA, Service Agreement No. 4225; Queue No. AF2–103 to be effective 1/28/2021 under ER21–1222 Filing Type: 10.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5287.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1223–000.

*Applicants:* Tucson Electric Power Company.

*Description:* Tucson Electric Power Company submits tariff filing per 35: Order No. 864 Compliance Filing to be effective 1/27/2020 under ER21–1223 Filing Type: 80.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5308.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

*Docket Numbers:* ER21–1224–000.

*Applicants:* Cleveland Cliffs Electric Supply LLC.

*Description:* Cleveland Cliffs Electric Supply LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession filing to be effective 3/1/2021 under ER21–1224 Filing Type: 30.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5310.

*Comment Date:* 5:00 p.m. Eastern Time on Friday, March 19, 2021.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR21–2–000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Petition of the North American Electric Reliability Corporation for approval of amendments to the SERC Reliability Corporation Regional Reliability Standards Development Procedure.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5256.

*Comment Date:* 5:00 p.m. ET 3/18/2021.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: February 26, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04577 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–46–000]**

### System Energy Resources, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 26, 2021, the Commission issued an order in Docket No. EL21–46–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether System Energy Resources, Inc.'s proposed rate decrease is unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful and further decreases may be warranted. *System Energy Resources, Inc.,* 174 FERC ¶ 61,153 (2021).

The refund effective date in Docket No. EL21–46–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–46–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: March 1, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–04587 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–1225–000]**

### Long Ridge Energy Generation LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 1, 2021.

This is a supplemental notice in the above-referenced Long Ridge Energy

Generation LLC's application for market-based rate authority, with an accompanying rate tariff, 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 March 22, 2021.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–04589 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–1218–000]**

### St. James Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 1, 2021.

This is a supplemental notice in the above-referenced St. James Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, 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 March 22, 2021.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04581 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–57–000]**

### Mountain Valley Pipeline, LLC; Notice of Application and Establishing Intervention Deadline

March 1, 2021.

Take notice that on February 19, 2021, Mountain Valley Pipeline, LLC (Mountain Valley), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting that the Commission issue an order amending Mountain Valley's certificate of public convenience and necessity (Certificate) for the Mountain Valley Pipeline Project (Project).[1] Mountain Valley requests that the Commission amend the Certificate to grant Mountain Valley the ability to change the crossing method for specific wetlands and waterbodies yet to be crossed by the Project from the open-cut crossings that were authorized by the Certificate to one of several trenchless methods. Mountain Valley proposes to use trenchless methods at 120 locations to cross 181 waterbodies and wetlands that the Commission originally authorized as open-cut. Mountain Valley is also

[1] *Mountain Valley Pipeline, LLC,* 161 FERC ¶ 61,043 (2017).

requesting authorization for two minor right-of-way shifts to avoid resources (Mileposts 0.70 and 230.8). Additionally, Mountain Valley avers no new landowners would be impacted by the changes, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Matthew Eggerding, Mountain Valley Pipeline, LLC, 2200 Energy Drive, Canonsburg, Pennsylvania 15317, by phone (412) 553–5786, or by email at *MEggerding@equitransmidstream.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: Complete its environmental review 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 environmental assessment (EA) for this proposal. The filing of an 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.

[2] 18 CFR (Code of Federal Regulations) 157.9.

**Public Participation**

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on March 22, 2021.

*Comments*

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before March 22, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP21–57–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*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 will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[3] Your written comments must reference the Project docket number (CP21–57–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

[3] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

*Interventions*

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[4] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is March 22, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP21–57–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select

[4] 18 CFR 385.102(d).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[7] Your motion to intervene must reference the Project docket number CP21–57–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 2200 Energy Drive, Canonsburg, Pennsylvania 15317 or at *MEggerding@equitransmidstream.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[8] motions to intervene are automatically granted by operation of Rule 214(c)(1).[9] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[10] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on March 22, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04580 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

[7] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[8] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[9] 18 CFR 385.214(c)(1).

[10] 18 CFR 385.214(b)(3) and (d).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–29–000]**

### Hillcrest Solar I, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 26, 2021, the Commission issued an order in Docket No. EL21–29–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Hillcrest Solar I, LLC's proposed Rate Schedule[1] is unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *Hillcrest Solar I, LLC,* 174 FERC ¶ 61,150 (2021).

The refund effective date in Docket No. EL21–29–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–29–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: February 26, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04579 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

[1] Hillcrest Solar I, LLC, FERC FPA Electric Tariff, Rate Schedules, Section 1, RATE SCHEDULE FERC NO. 1, 1.0.0.

## 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:* EC21–58–000.

*Applicants:* Upper Peninsula Power Company, Axium UP Holdings LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Upper Peninsula Power Company, et al.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5460.

*Comment Date:* 5 p.m. ET 3/19/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2738–008; ER20–2586–001.

*Applicants:* North Fork Ridge Wind, LLC, The Empire District Electric Company.

*Description:* Notice of Non-Material Change in Status of The Empire District Electric Company, et al.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5458.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER20–2009–004.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* Tri-State Generation and Transmission Association, Inc. submits tariff filing per 35: Attachment M Compliance Filing to be effective 2/25/2020.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5324.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER21–251–001.

*Applicants:* Degrees3 Transportation Solutions, LLC.

*Description:* Second Supplement to October 29, 2020 Degrees3 Transportation Solutions, LLC tariff filing.

*Filed Date:* 02/25/2021.

*Accession Number:* 20210225–5186.

*Comment Date:* 5 p.m. ET 3/18/21.

*Docket Numbers:* ER21–610–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Supplement and Correction: First Revised ISA, SA No. 1503; Queue No. AD2–001 to be effective 8/31/2020.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5100.

*Comment Date:* 5 p.m. ET 3/22/21.

*Docket Numbers:* ER21–1225–000.

*Applicants:* Long Ridge Energy Generation LLC.

*Description:* Long Ridge Energy Generation LLC submits tariff filing per 35.12: Application For Market Based Rate Authority to be effective 4/29/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5325.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER21–1226–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. submits the Forward Capacity Auction Results Filings for the Fifteenth Forward Capacity Auction.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5330.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER21–1227–000.

*Applicants:* Grover Hill Wind, LLC.

*Description:* Grover Hill Wind, LLC submits Petition for Limited Waiver of the deadline in Section 206.2 of the PJM OATT.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5347.

*Comment Date:* 5 p.m. ET 3/8/21.

*Docket Numbers:* ER21–1228–000.

*Applicants:* New England Power Pool Participants Committee.

*Description:* New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: March 2021 Membership Filing to be effective 2/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5362.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER21–1229–000.

*Applicants:* Public Service Company of New Mexico.

*Description:* Public Service Company of New Mexico submits tariff filing per 35.13(a)(2)(iii: PNM Administrative Filing to Update Schedule 4 tariff record to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5368.

*Comment Date:* 5 p.m. ET 3/19/21.

*Docket Numbers:* ER21–1230–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original WMPA, Service Agreement No. 5989; Queue No. AF1–217 to be effective 2/2/2021.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5024.

*Comment Date:* 5 p.m. ET 3/22/21.

*Docket Numbers:* ER21–1233–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Supplement and Correction: First Revised ISA, SA No. 1503; Queue No. AD2–001 to be effective 8/31/2020.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5080.

*Comment Date:* 5 p.m. ET 3/22/21.

*Docket Numbers:* ER21–1234–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA Coso Navy 2 BLM Coso Energy Storage Project TOT274 & TOT275 SA No. 262 to be effective 3/2/2021.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5164.

*Comment Date:* 5 p.m. ET 3/22/21.

*Docket Numbers:* ER21–1235–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original ISA, Service Agreement No. 5967; Queue No. AE1–084 to be effective 2/1/2021.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5173.

*Comment Date:* 5 p.m. ET 3/22/21.

*Docket Numbers:* ER21–1236–000.

*Applicants:* Northern Indiana Public Service Company.

*Description:* Northern Indiana Public Service Company LLC submits tariff filing per 35.13(a)(2)(iii: Filing of a CIAC Agreement to be effective 3/1/2021.

*Filed Date:* 03/01/2021.

*Accession Number:* 20210301–5199.

*Comment Date:* 5 p.m. ET 3/22/21.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES21–33–000.

*Applicants:* Upper Peninsula Power Company.

*Description:* Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities for Upper Peninsula Power Company.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5462.

*Comment Date:* 5 p.m. ET 3/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: March 1, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04583 Filed 3–4–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–1217–000]**

### Iris Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 1, 2021.

This is a supplemental notice in the above-referenced Pioneer Iris Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, 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 March 22, 2021.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–04582 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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 Number:* PR21–33–000.
*Applicants:* Enable Oklahoma Intrastate Transmission, LLC.
*Description:* Tariff filing per 284.123(b),(e)+(g): Enable Revised Fuel Percentages April 1, 2021 through March 31, 2022 to be effective 4/1/2021.
*Filed Date:* 2/25/2021.
*Accession Number:* 202102255191.
*Comments Due:* 5 p.m. ET 3/18/2021.
*284.123(g) Protests Due:* 5 p.m. ET 4/26/2021.

*Docket Number:* PR21–34–000.
*Applicants:* Enable Oklahoma Intrastate Transmission, LLC.
*Description:* Tariff filing per 284.123(b)(2)+(: EOIT 2021 Petition for Section 311 Rate Approval to be effective 4/1/2021.
*Filed Date:* 2/26/2021.
*Accession Number:* 202102265306.
*Comments/Protests Due:* 5 p.m. ET 3/19/2021.

*Docket Number:* PR21–35–000.
*Applicants:* Bay Gas Storage Company, LLC.
*Description:* Tariff filing per 284.123(b),(e)/: 2021 Annual Adjustment to Company Use Percentage to be effective 3/1/2021.
*Filed Date:* 2/26/2021.
*Accession Number:* 202102265309.
*Comments/Protests Due:* 5 p.m. ET 3/19/2021.

*Docket Numbers:* RP21–525–000.
*Applicants:* Midwestern Gas Transmission Company.
*Description:* Midwestern Gas Transmission Company submits tariff filing per 154.312: 2021 NGA Section 4 Rate Case to be effective 4/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5027.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–526–000.
*Applicants:* Equitrans, L.P.
*Description:* Equitrans, L.P. submits tariff filing per 154.203: Refund Report—Hastings Outage September 2020.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5045.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–527–000.
*Applicants:* Midship Pipeline Company, LLC.
*Description:* Midship Pipeline Company, LLC submits tariff filing per 154.403(d)(2): Transportation Retainage Adjustment Effective 4/1/2021 to be effective 4/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5059.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–528–000.
*Applicants:* Cheniere Creole Trail Pipeline, L.P.
*Description:* Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.403(d)(2): Transportation Retainage Adjustment—Effective April 2021 to be effective 4/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5063.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–529–000.
*Applicants:* Cheniere Corpus Christi Pipeline, LP.
*Description:* Cheniere Corpus Christi Pipeline, LP submits tariff filing per 154.204: Electric Power Costs Adjustment Effective April 1, 2021 to be effective 4/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5073.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–530–000.
*Applicants:* Maritimes & Northeast Pipeline, L.L.C.
*Description:* Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: Negotiated Rate—Northern Utilities 210363 eff 3–1–2021 to be effective 3/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5087.
*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–531–000.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas Company submits tariff filing per 154.204: 20210226 Negotiated Rate to be effective 3/1/2021.
*Filed Date:* 02/26/2021.
*Accession Number:* 20210226–5099.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–532–000.

*Applicants:* Colorado Interstate Gas Company, L.L.C.

*Description:* Colorado Interstate Gas Company, L.L.C. submits tariff filing per 154.403(d)(2): Qtrly LUF & Semi-Annual ML Fuel Filing to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5100.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–533–000.

*Applicants:* Tallgrass Interstate Gas Transmission, LLC

*Description:* Tallgrass Interstate Gas Transmission, LLC submits tariff filing per 154.403(d)(2): TIGT 2021–02–26 Fuel and L&U Reimbursement and Power Cost Tracker to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5101.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–534–000.

*Applicants:* Southern Star Central Gas Pipeline, Inc.

*Description:* Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.204: Fuel Filing—Eff. April 1, 2021 to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5118.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–535–000.

*Applicants:* Kern River Gas Transmission Company.

*Description:* Kern River Gas Transmission Company submits tariff filing per 154.204: 2021 Daggett Surcharge Filing to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5141.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–536–000.

*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—Connecticut Natural SP64028 to be effective 3/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5158.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–537–000.

*Applicants:* High Island Offshore System, L.L.C.

*Description:* 2020 Annual Fuel Tracker Filing of High Island Offshore System, L.L.C.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5180.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–538–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.204: Non-Conforming Agreements (SWG) to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5183.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–539–000.

*Applicants:* TransColorado Gas Transmission Company LLC.

*Description:* TransColorado Gas Transmission Company LLC submits tariff filing per 154.403(d)(2): FLU Update FIling to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5214.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–540–000.

*Applicants:* LA Storage, LLC.

*Description:* LA Storage, LLC submits tariff filing per 154.204: LA Storage 2021 Annual Adjustment of Fuel Retainage Percentage to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5228.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–541–000.

*Applicants:* Northwest Pipeline LLC.

*Description:* Northwest Pipeline LLC submits tariff filing per 154.204: North Seattle and South Seattle Annual Charges Update Filing 2021 to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5229.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–542–000

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Mar 2021 to be effective 3/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5276.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–543–000.

*Applicants:* Northwest Pipeline LLC.

*Description:* Northwest Pipeline LLC submits tariff filing per 154.204: New Rate Schedule TPAL & Revise Existing Rate Schedule PAL to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5280.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–544–000.

*Applicants:* Cove Point LNG, LP.

*Description:* Cove Point LNG, LP submits tariff filing per 154.403: Cove Point—2021 Annual EPCA to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5281.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–545–000.

*Applicants:* Cove Point LNG, LP.

*Description:* Cove Point LNG, LP submits tariff filing per 154.403(d)(2): Cove Point—2021 Annual Fuel Retainage and Request for Waiver to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5290.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–546–000.

*Applicants:* Hardy Storage Company, LLC.

*Description:* Hardy Storage Company, LLC submits tariff filing per 154.203: Annual Report on Operational Transactions 2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5291.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–547–000.

*Applicants:* Crossroads Pipeline Company.

*Description:* Crossroads Pipeline Company submits tariff filing per 154.203: Annual Report on Operational Transactions 2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5294.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–548–000.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* Eastern Shore Natural Gas Company submits tariff filing per 154.204: Capital Cost Surcharge #1 True-Up to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5297.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–549–000.

*Applicants:* NEXUS Gas Transmission, LLC.

*Description:* NEXUS Gas Transmission, LLC submits tariff filing per 154.403(d)(2): 2021 Nexus ASA Filing to be effective 4/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5305.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–550–000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Rockies Express Pipeline LLC submits tariff filing per 154.204: REX 2021–02–26 Negotiated Rate Agreements to be effective 3/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5333.

*Comment Date:* 5 p.m. ET 3/10/2021.

*Docket Numbers:* RP21–551–000.

*Applicants:* Southern Star Central Gas Pipeline, Inc.

*Description:* Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.204: Vol. 2—Negotiated Rate

Agreement—Scout Energy Group III to be effective 3/1/2021.

*Filed Date:* 02/26/2021.

*Accession Number:* 20210226–5370.

*Comment Date:* 5 p.m. ET 3/10/2021.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene 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: March 1, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–04590 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–53–000]**

### Wheat Belt Public Power District, La Plata Electric Association, Inc., Northwest Rural Public Power District, San Isabel Electric Association, Inc., San Miguel Power Association, Springer Electric Cooperative, Inc., United Power, Inc. v. Tri-State Generation and Transmission Association, Inc.; Notice of Complaint

Take notice that on February 26, 2021, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Wheat Belt Public Power District, La Plata Electric Association, Inc., Northwest Rural Public Power District, San Isabel Electric Association, Inc., San Miguel Power Association, Springer Electric Cooperative, Inc., and United Power, Inc. (collectively, Joint Complainants) filed a formal complaint against Tri-State Generation and Transmission Association, Inc. (Respondent), requesting the Commission to: (1) Require Respondent to immediately calculate contract termination payments for the Joint Complainants under Rate Schedule No. 281; (2) initiate a section 206 investigation into the Contract Termination Payment Methodology that is pending in Docket No. ER20–1559; and (3) consolidate the section 206 investigation with Docket No. ER20–1559, all as more fully explained in the complaint.

The Joint Complainants certify that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

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 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on March 18, 2020.

Dated: March 1, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–04588 Filed 3–4–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2017–0750; FRL–10019–35]**

### Pesticide Registration Review; Proposed Interim Decisions for Several Wood Preservative Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: Creosote; chromated arsenicals and dichromic acid, disodium salt, dehydrate; and pentachlorophenol.

**DATES:** Comments must be received on or before May 4, 2021.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room are closed to public visitors with limited

exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/*dockets.

**FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

*For general information on the registration review program, contact:* Richard Fehir, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8101; email address: *fehir.richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

## II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

## III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1, and opens a 60-day public comment period on the proposed interim registration review decisions.

TABLE 1—PROPOSED INTERIM DECISIONS

| Registration review case name and No. | Docket ID No. | Chemical review manager and contact information |
|---|---|---|
| Chromated Arsenicals, Case 0132 [a] | EPA–HQ–OPP–2015–0349 | Daniel Halpert, *halpert.daniel@epa.gov*, (703) 347–0133. |
| Dichromic acid, disodium salt, dehydrate, Case 5012 [a] | EPA–HQ–OPP–2010–0243 | Daniel Halpert, *halpert.daniel@epa.gov*, (703) 347–0133. |
| Creosote, Case 0139 | EPA–HQ–OPP–2014–0823 | Daniel Halpert, *halpert.daniel@epa.gov*, (703) 347–0133. |
| Pentachlorophenol, Case 2505 | EPA–HQ–OPP–2014–0653 | Daniel Halpert, *halpert.daniel@epa.gov*, (703) 347–0133. |

[a] The Proposed Interim Decisions for chromated arsenicals and dichromic acid, disodium salt, dihydrate will be released in a single document available in the dockets for both cases.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the tables in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All

comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: January 6, 2021.

**Anita Pease,**

*Director, Antimicrobials Division, Office of Pesticide Programs.*

[FR Doc. 2021–04563 Filed 3–4–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–10021–24–OA]**

## Local Government Advisory Committee and Small Communities Advisory Subcommittee: Request for Nominations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of request for nominations.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA) Office of Intergovernmental Relations invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee (SCAS). LGAC and SCAS members and qualified nominees hold elected or appointed positions with local, tribal, state, and territorial governments. This notice solicits nominations to fill up to 30 memberships on EPA's LGAC and 10–15 on the SCAS throughout 2021.

**DATES:** To be considered for 2021 appointments, nominations should be submitted by April 16, 2021. Nominations are reviewed on an ongoing basis.

**ADDRESSES:** Submit nominations electronically to *LGAC@epa.gov* with a subject heading of 'LGAC 2021 NOMINATION.'

**FOR FURTHER INFORMATION CONTACT:** Paige Lieberman, the LGAC Designated Federal Officer at (202) 564–9957/ *LGAC@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The LGAC is chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463, to advise the EPA Administrator on environmental issues impacting local governments. The Small Communities Advisory Subcommittee is the LGAC's standing subcommittee to advise on issues of concern to smaller communities. Members of LGAC and SCAS will provide advice and recommendations on a broad range of issues related to our shared goals of promoting and protecting public health and the environment. These issues may include: Advancing environmental justice; ensuring access to clean air and water; reducing greenhouse gas emissions; bolstering resilience to the impacts of climate change; and limiting exposure to dangerous chemicals and pesticides.

Viable candidates must be current elected or appointed officials representing local, state, tribal or territorial governments. Additional criteria to be considered may include: Experience with multi-sector partnerships; coalition-building and grassroots involvement; involvement and leadership in national, state or regional intergovernmental associations; knowledge of and commitment to promoting environmental protection and public health issues, including those of communities of color and low-income communities; and leadership and implementation of federal, state, local, tribal, territorial and international environmental programs, including permitting programs, Brownfields, Superfund clean-up, air and water quality, solid waste management, emissions reduction, resiliency and adaptation, sustainability, and environmental justice programs. Diversity in vocational/career/volunteer background, professional and community affiliations, and demonstrated familiarity with local, regional, national, and international environmental issues, also may be considered.

LGAC members are appointed for 1–2-year terms and are eligible for reappointment. The Committee meets multiple times a year, typically with at least one in-person meeting. EPA is committed to prioritizing members' health and safety during the COVID–19 pandemic and will follow CDC guidelines when considering any in-person meeting. The Administrator may ask members to serve on Subcommittees and Workgroups to develop reports and recommendations to address specific policy issues, reflecting the priorities of the Administration. The average workload for members is approximately 5 hours per month. While EPA is unable to provide compensation for services, official Committee travel and related expenses (lodging, etc.) will be fully reimbursed.

*Nominations:* Nominations must be submitted in electronic format. To be considered, all nominations should include:

- Current contact information for the applicant/nominee, including name, organization (and position within that organization), current work address, email address, and daytime telephone number;
- Brief statement describing the nominee's interest in serving on the LGAC;
- Resume and/or short biography (no more than 2 pages) describing professional, educational, and other pertinent qualifications of the nominee, including a list of relevant activities as well as any current or previous service on advisory committees; and,
- Any letter(s) of recommendation from a third party (or parties) supporting the nomination. Letter(s) should describe how the nominee's experience and knowledge will bring value to the work of the LGAC.

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of elected and appointed officials from diverse backgrounds so that the LGAC and SCAS look like America and reflect the country's rich diversity. Individuals may self-nominate.

Dated: March 2, 2021.

**Julian (Jack) Bowles,**

*Director, State and Local Government Relations.*

[FR Doc. 2021–04624 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9055–5]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed February 22, 2021 10 a.m. EST Through March 1, 2021 10 a.m. EST
Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210023, Draft Supplement, USACE, SC, Haile Gold Mine, Comment Period Ends: 04/23/2021, Contact: Shawn Boone 843–329–8158.

EIS No. 20210024, Draft, FHWA, MD, Chesapeake Bay Crossing Study Tier 1 NEPA, Comment Period Ends: 05/10/2021, Contact: Jeanette Mar 410–779–7152.

EIS No. 20210025, Draft, USACE, LA, Proposed Mid-Barataria Sediment Diversion Project in Plaquemines Parish, Louisiana, Comment Period Ends: 05/04/2021, Contact: Brad Laborde 504–862–2225.

**Amended Notice**

EIS No. 20210002, Draft, BOEM, AK, WITHDRAWN—Cook Inlet Planning Area Oil and Gas Lease Sale 258, Contact: Amee Howard 907–334–5200. Revision to FR Notice Published 01/15/2021; Officially Withdrawn per request of the submitting agency.

EIS No. 20210005, Final, USFS, AZ, WITHDRAWN—Resolution Copper Project and Land Exchange, Contact: Mary Rasmussen 602–225–5200. Revision to FR Notice Published 01/15/2021; Officially Withdrawn per request of the submitting agency.

Dated: March 1, 2021.

**Cindy S. Barger,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2021–04543 Filed 3–4–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–FRL–10020–83–OP]**

## National Environmental Justice Advisory Council; Notification of Virtual Public Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification for a series of public meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Due to the limit of 500 participants, attendance will be on a first-come, first served basis. Registration is required.

**DATES:** The NEJAC will hold a series of virtual public meetings on Wednesday, March 24, 2021, Thursday, May 6, 2021, and Thursday, June 17, 2021, from approximately 1:00 p.m. to 7:00 p.m., Eastern Daylight Time each day. The meeting discussions will focus on several topics including, but not limited to, EPA administration transitions priorities, and discussions and deliberations of a charge related to the reuse and revitalization of Superfund and other contaminated sites. A public comment period relevant to the specific issues will be considered by the NEJAC at each meeting (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must—register by 11:59 p.m., Eastern Daylight Time, one (1) week prior to each meeting date.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Martin, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* telephone: (202) 564–0203. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

**SUPPLEMENTARY INFORMATION:** The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

Registration: Individual registration is required for each virtual public meeting. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration for the meetings and to speak for public comment will close at 11:59 p.m., Eastern Daylight Time, one (1) week prior to meeting date. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments at time of registration.

**A. Public Comment**

Individuals or groups making remarks during the public comment period will be limited to three (3) minutes. To accommodate the number of people who want to address the NEJAC, only one representative from each community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by the registration deadline, will be included in the materials distributed to the NEJAC prior to the meeting. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *nejac@epa.gov.*

**B. Information About Services for Individuals With Disabilities or Requiring English language Translation Assistance**

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Matthew Tejada,**

*Director for the Office of Environmental Justice.*

[FR Doc. 2021–04506 Filed 3–4–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0751; FRS 17533]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before May 4, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0751.

*Title:* Contracts and Concessions, 47 CFR 43.51.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents/Responses:* 20 respondents, 20 responses.

*Estimated Time per Response:* 6–8 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 211, 219 and 220.

*Total Annual Burden:* 140 hours.

*Annual Cost Burden:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission has determined that the authorized resale of international private lines inter-connected to the U.S. public switched network would tend to divert international message telephone service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. The information will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on the Commission's international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor the unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2021–04616 Filed 3–4–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 5, 2021.

*A. Federal Reserve Bank of San Francisco* (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Riverview Bancorp, Inc., Vancouver, Washington;* to become a bank holding company upon the conversion of its wholly-owned subsidiary, Riverview Community Bank, Vancouver, Washington, from a federal savings bank to a Washington state-chartered non-member bank.

Board of Governors of the Federal Reserve System, March 2, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–04638 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve proposed updates to the approved information collection project ''Safety Program in Perinatal Care (SPPC)-II Demonstration Project.''

**DATES:** Comments on this notice must be received by May 4, 2021.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Proposed Project

### Safety Program in Perinatal Care (SPPC)-II Demonstration Project

The SPPC–II *Demonstration Project* has the following goals:

(1) To implement the integrated Alliance for Innovation on Maternal Health (AIM)-SPPC II program in birthing hospitals in Oklahoma and Texas in coordination with AIM and the respective state PQC (Perinatal Quality Collaborative);

(2) To assess the implementation of the integrated AIM–SPPC II program in these hospitals; and

(3) To ascertain the short- and medium-term impact of the integrated AIM–SPPC II program on hospital (*i.e.,* perinatal unit) teamwork and communication, patient safety, and key maternal health outcomes.

This study is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU) and the AIM program, JHU's subcontractor, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a (a)(1) and (2).

Due to continued pandemic-related impacts on the SPPC–II study population, we propose to update the SPPC–II data collection by (1) restructuring and adding questions to the approved qualitative interview guides to be used with AIM program Team Leads and now frontline health providers in the summer/fall of 2021 to include questions to better understand the perceived implementation context; and (2) adding focus group discussions in the summer/fall of 2022 to assess perceptions of implementation and sustainability of the SPPC–II Toolkit at the hospital level The total burden hours resulting from these proposed updates to the SPPC–II data collection is 64 hours. The total estimated annual burden hours for SPPC–II are 54,693.

### Method of Collection

To achieve the goals of this project the following updates to the data collections will be implemented:

*(a) Qualitative, semi-structured interviews with AIM Team Leads and frontline staff* will be conducted by phone or via zoom in the summer/fall of 2021 to assess the perceived utility of the training and the perceived implementation context (including barriers, facilitators, and strategies) in the context of a reduced scope for SPCC–II. In 8 hospitals, one-hour interviews with AIM Team Leads (1 per hospital) and 30-minute interviews with frontline staff (4 per hospital) will be conducted. An interview guide developed based on the Consolidated Framework for Implementation Research framework will be used to conduct the interviews, together with a corresponding consent form. The interview guide will be supported by the SPPC–II tier level training specific handouts.

*(b) Focus group discussions with AIM Team Leads and frontline staff* will be conducted by phone or via zoom in the summer/fall of 2022 to assess perceptions of implementation and sustainability of the SPPC–II Toolkit at the hospital level. We will conduct one 1-hour focus groups with AIM Team Leads and frontline staff in each of the 8 hospitals. An interview guide developed based on the Consolidated Framework for Implementation Research framework will be used to conduct the interviews, together with a corresponding consent form.

### Estimated Annual Respondent Burden

Exhibit 1 shows only the estimated annualized burden hours for the respondents' time to participate in updates to the information collection of the SPPC–II Demonstration Project.

One-hour qualitative interviews will be conducted with a total of 8 AIM Team Leads and 30-minute qualitative interviews with 32 frontline staff in 8 hospitals. We will also conduct 8 one-hour focus group discussions with a total of 40 AIM Team Leads and frontline staff in the same hospitals.

The total burden hours resulting from the proposed updates to the SPPC–II data collection is 64 hours. The total annual burden hours are estimated to be 54,693 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Qualitative semi-structured interviews with AIM Team Leads | 8 | 1 | 1.00 | 8 |
| Qualitative semi-structured interviews with frontline staff | 32 | 1 | 0.50 | 16 |
| Focus group discussions with AIM Team Leads and frontline staff | 40 | 1 | 1 | 40 |
| Total | 80 | NA | NA | 64 |

Exhibit 2 shows only the hours and cost of updates to the collection. The total cost burden of the updated collection is estimated to be $1,421,576.68 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Qualitative semi-structured interviews with AIM Team Leads | 8 | 8 | $49.83 | $398.64 |
| Qualitative semi-structured interviews with frontline staff | 32 | 16 | 49.83 | 797.28 |
| Focus group discussions with AIM Team Leads and frontline staff | 40 | 40 | 49.83 | 1,993.20 |
| Total | 80 | 64 | | $3,189.12 |

* National Compensation Survey: Occupational wages in the United States May 2017 "U.S. Department of Labor, Bureau of Labor Statistics." Weighted mean hourly wage for obstetrician-gynecologists ($113.10; occupation code 29–1064; 30%); nurse-midwives ($49.83; occupation code 29–1161; 30%); registered nurses ($35.36; occupation code 29–1161; 20%); and nurse practitioners ($51.86; occupation code 29–1171; 20%).

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 1, 2021.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021–04502 Filed 3–4–21; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Supplemental Evidence and Data Request on Management of Infantile Epilepsy

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for Supplemental Evidence and Data Submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Management of Infantile Epilepsy,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

**DATES:** *Submission Deadline* on or before April 5, 2021.

**ADDRESSES:**

*Email submissions: epc@ahrq.hhs.gov.*

*Print submissions:*

*Mailing Address:* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

*Shipping Address (FedEx, UPS, etc.):* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Management of Infantile Epilepsy.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Management of Infantile Epilepsy,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/management-infantile-epilepsy/research-protocol.*

This is to notify the public that the EPC Program would find the following information on *Management of Infantile Epilepsy* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying

with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

*The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.*

**Key and Contextual Questions**

*Key Question 1.* What is the effectiveness and comparative effectiveness of pharmacologic treatments for infantile epilepsy (infants age 1 month to <3 years)?

*Key Question 2.* What is the effectiveness and comparative effectiveness of non-pharmacologic treatments for infantile epilepsy (*e.g.,* dietary therapies, surgery, and brain stimulation therapies), including comparisons to other non-pharmacologic and/or pharmacologic therapies?

*Key Question 3.* What are the harms or comparative harms of treatments for infantile epilepsy?

*Contextual Question 1.* What are the parental preferences for treatment options for infantile epilepsy?

*Contextual Question 2.* What are the harms or comparative harms of not treating infantile epilepsy?

PICOTS

[Population, intervention, comparator, outcome, timing, setting]

| | Inclusion | Exclusion |
|---|---|---|
| Population | • Infants (1 month to <3 years) diagnosed with epilepsy<br>• Subpopulations based on baseline seizure severity/frequency, history of previous treatment, length of gestation. | • West syndrome/infantile spasms.<br>• Non-epileptic seizures.<br>• Provoked seizures, including febrile seizures.<br>• Metabolic epilepsies.<br>• Status epilepticus.<br>• Acute symptomatic seizures.<br>• Diagnostic research.<br>• Provider/organization level interventions such as awareness campaigns.<br>• Metabolic therapies.<br>• Vitamin therapies.<br>• Social and community services. |
| Intervention | • KQ 1, 3: Pharmacologic interventions<br>• KQ 2, 3: Non-pharmacologic intervention: dietary therapies, surgery, brain stimulation, and gene therapy. | |
| Comparator | • KQ1: Other pharmacologic interventions or usual care.<br>• KQ2: Other pharmacologic or non-pharmacologic interventions or usual care.<br>• KQ3: Inclusive of comparators for KQ1&2. | |
| Outcomes | • All-cause mortality.<br>• SUDEP.<br>• Hospitalization.<br>• Seizure freedom.<br>• Seizure frequency.<br>• Seizure severity (including seizure duration, seizure burden, and status epilepticus).<br>• Engel classification.<br>• Progression to other seizure types or syndromes (*e.g.,* infantile spasms, Lennox-Gastaut Syndrome).<br>• Time to seizure remission.<br>• Neurodevelopment.<br>• Quality of life (including eating).<br>• Sleep outcomes (*e.g.,* total time spent asleep at night).<br>• Behavioral function.<br>• Cognitive function.<br>• Functional performance (including school).<br>• Social function.<br>• Caregiver anxiety.<br>• Caregiver quality of life.<br>• General health status.<br>• Cost of treatment.<br>• Adverse events (infection, new neurological deficits, surgical complications, irritability, somnolence, dizziness, drug toxicity, etc.). | |
| Timing | Effectiveness: 12 week minimum follow-up.<br>Harms: No minimum follow-up. | |
| Setting | Setting not limited. | |

Dated: March 1, 2021.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021–04538 Filed 3–4–21; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Request for Information on the Use of Clinical Algorithms That Have the Potential To Introduce Racial/Ethnic Bias Into Healthcare Delivery

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of Request for Information.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking information from the public on clinical algorithms that are used or recommended in medical practice and any evidence on clinical algorithms that may introduce bias into clinical decision- making and/or influence access to care, quality of care, or health outcomes for racial and ethnic minorities and those who are socioeconomically disadvantaged.

**DATES:** Comments must be submitted on or before May 4, 2021. The EPC Program will not respond individually to responders but will consider all comments submitted by the deadline.

**ADDRESSES:** Submissions should follow the Submission Instructions below. We prefer that comments be submitted electronically on the submission website. Email submissions may also be sent to: *epc@ahrq.gov*

**FOR FURTHER INFORMATION CONTACT:** Anjali Jain, Email: *Anjali.Jain@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality (AHRQ) is seeking information from the public on clinical algorithms that are used or recommended in medical practice and any evidence on clinical algorithms that may introduce bias into clinical decision-making and/or influence access to care, quality of care, or health outcomes for racial and ethnic minorities and those who are socioeconomically disadvantaged.

Information received in response to this request will be used to inform an AHRQ Evidence-Based Practice Center Program (EPC) evidence review and may inform other activities commissioned by or in collaboration with AHRQ. Established in 1997, the mission of the EPC Program (*https://effectivehealthcare.ahrq.gov/about/epc*) is to create evidence reviews that improve healthcare by supporting evidence-based decision-making by patients, providers, and policymakers. Evidence reviews summarize and synthesize existing literature and evidence using rigorous methods. AHRQ is conducting this review pursuant to sections 902 and 901(c) of the Public Health Service Act, 42 U.S.C. 299a and 42 U.S.C. 299(c).

AHRQ intends to commission an evidence review that will critically appraise the evidence on commonly used algorithms, including whether race/ethnicity is included as an explicit variable, and how algorithms have been developed and validated. The review would examine how race/ethnicity and related variables included in clinical algorithms impact healthcare use, patient outcomes and healthcare disparities. In addition, the review will identify and assess other variables with the potential to introduce bias such as prior utilization. The review will identify and review approaches to clinical algorithm development that avoid the introduction of racial and ethnic bias into clinical decision making and resulting outcomes.

For the purposes of this evidence review, clinical algorithms are defined as a set of steps that clinicians use to guide decision-making in preventive services (such as screening), in diagnosis, clinical management, or otherwise assessing or improving a patient's health. Algorithms are informed by data and research evidence and may include patient-specific factors or characteristics which may be sociodemographic factors such as race/ethnicity, physiologic factors such as, for example, blood sugar level, or others such as patterns of healthcare utilization.

When used appropriately, algorithms can improve disease management and patient health by creating efficiencies in place of individuals having to weigh multiple and complex factors when making a clinical judgement. As a result, the use of clinical algorithms has become widespread in healthcare and includes a heterogeneous set of tools including clinical pathways/guidelines, the establishment of norms and standards that may vary according to patient-specific factors, clinical decision support embedded in electronic health records (EHRs) or within medical devices, pattern recognition software used for diagnosis, and apps and calculators that predict patient risk and prognosis. Some clinical algorithms include information about a patient's race or ethnicity among its inputs and thus lead clinicians to decision-making that varies by race/ethnicity, including decisions about how best to diagnose and manage individual patients.

The purpose of this evidence review is to understand which algorithms are currently used in different clinical settings; the type and extent of their validation; their potential for bias with impact on access, quality, and outcomes of care; awareness among clinicians of these issues; and strategies for developing and testing clinical algorithms to assure that they are free of bias in order to inform the scope of a future evidence review. We are interested in understanding which algorithms are currently in use in clinical practice including those related to the use of clinical preventive services. How many include race/ethnicity and other factors that could lead to bias within the algorithm? We are interested in all algorithms including clinical pathways/guidelines, norms and standards (including laboratory values) that vary according to patient-specific factors such as race/ethnicity and related variables, clinical decision support embedded in EHRs, pattern recognition software, and apps and calculators for patient risk and prognosis. We are interested both in algorithms developed through traditional methods and through new and ongoing methods including machine learning and artificial intelligence. AHRQ seeks information

- From healthcare providers who use clinical algorithms to screen, diagnose, triage, treat or otherwise care for patients
- From laboratorians or technicians who use algorithms to interpret lab or radiology data
- From researchers and clinical decision support developers who develop algorithms used in healthcare for patients
- From clinical professional societies or other groups who develop clinical algorithms for healthcare
- From payers who use clinical algorithms to guide payment decisions for care for patients
- From healthcare delivery organizations who use clinical algorithms to determine healthcare practices and policies for patients
- From device developers who incorporate algorithms into device software to interpret data and set standards
- From patients whose healthcare and healthcare decisions may be informed by clinical algorithms

Specific questions of interest to the AHRQ include, but are not limited to, the following:

1. What clinical algorithms are used in clinical practice, hospitals, health systems, payment systems, or other instances? What is the estimated impact of these algorithms in size and characteristics of population affected, quality of care, clinical outcomes, quality of life and health disparities?

2. Do the algorithms in question 1 include race/ethnicity as a variable and, if so, how was race and ethnicity defined (including from whose perspective and whether there is a designation for mixed race or multiracial individuals)?

3. Do the algorithms in question 1 include measures of social determinants of health (SDOH) and, if so, how were these defined? Are these independently or collectively examined for their potential contribution to healthcare disparities and biases in care?

4. For the algorithms in question 1, what evidence, data quality and types (such as claims/utilization data, clinical data, social determinants of health), and data sources were used in their development and validation? What is the sample size of the datasets used for development and validation? What is the representation of Black, Indigenous, and People of Color (BIPOC) and what is the power to detect between-group differences? What methods were used to validate the algorithms and measure health outcomes associated with the use of the algorithms?

5. For the algorithms in question 1, what approaches are used in updating these algorithms?

6. Which clinical algorithms have evidence that they contribute to healthcare disparities, including decreasing access to care, quality of care or worsening health outcomes for BIPOC? What are the priority populations or conditions for assessing whether algorithms increase racial/ethnic disparities? What are the mechanisms by which use of algorithms contribute to poor care for BIPOC?

7. To what extent are users of algorithms including clinicians, health systems, and health plans aware of the inclusion of race/ethnicity or other variables that could introduce bias in these algorithms and the implications for clinical decision making? What evidence is available about the degree to which the use of clinical algorithms contributes to bias in care delivery and resulting disparities in health outcomes? To what extent are patients aware of the inclusion of race/ethnicity or other variables that can result in bias in algorithms that influence their care? Do providers or health systems communicate this information with patients in ways that can be understood?

8. What are approaches to identifying sources of bias and/or correcting or developing new algorithms that may be free of bias? What evidence, data quality and types (such as claims/utilization data, clinical data, information on social determinants of health), and data sources and sample size are used in their development and validation? What is the impact of these new approaches and algorithms on outcomes?

9. What challenges have arisen or can arise by designing algorithms developed using traditional biomedical or physiologic factors (such as blood glucose) yet include race/ethnicity as a proxy for other factors such as specific biomarkers, genetic information, etc.? What strategies can be used to address these challenges?

10. What are existing and developing standards (national and international) about how clinical algorithms should be developed, validated, and updated in a way to avoid bias? Are you aware of guidance on the inclusion or race/ethnicity, related variables such as SDOH, prior utilization, or other variables to minimize the risk of bias?

11. To what extent are users of clinical algorithms educated about how algorithms are developed or may influence their decision-making? What educational curricula and training is available for clinicians that addresses bias in clinical algorithms?

AHRQ is interested in all of the questions listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas identified in response to it. AHRQ will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. However, responses to the RFI may be reflected in future solicitation(s) or policies. The information provided will be analyzed and may appear in reports. Respondents will not be identified in any published reports. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public.

Dated: March 1, 2021.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021–04509 Filed 3–4–21; 8:45 am]

BILLING CODE 4160–90–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket No. CDC–2020–0011]**

### Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Diphtheria, Group A Streptococcus, Meningococcal Disease, and Pertussis Sections; Re-Opening of Comment Period

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice with comment.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (DHHS), announces the re-opening of a docket to obtain a public comment on the *DRAFT Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Diphtheria, Group A* Streptococcus, *Meningococcal Disease, and Pertussis Sections* (''*Draft Guideline*'').

**DATES:** Written comments must be received on or before May 4, 2021.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0011, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, Attn: Docket No. CDC–2020–0011, Infection Prevention and Control Guidelines, 1600 Clifton Rd. NE, Mailstop H16–2, Atlanta, Georgia, 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For

access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Erin Stone, M.A., Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–2, Atlanta, Georgia, 30329; Email: *IPCGuidelines@cdc.gov;* Telephone: (404) 639–4000.

**SUPPLEMENTARY INFORMATION:**

## Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data related to the *Draft Guideline.*

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted in preparation of the final *Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients* and may revise the *Draft Guideline* as appropriate.

## Background

On February 26, 2020, CDC published a notice in the **Federal Register** requesting public comment on the 'Draft Infection Control in Healthcare Personnel: Epidemiology and Control of Selected Infections Transmitted Among Healthcare Personnel and Patients: Diphtheria, Group A *Streptococcus,* Meningococcal Disease, and Pertussis Sections' (85 FR 11084). Because the original notice was published in the early days of the COVID–19 pandemic, interested persons may not have had the opportunity to provide comment. For this reason, CDC has decided to re-open the comment period to provide the public with additional time to review the draft document and provide comment.

The *Draft Guideline* updates four sections of the *Guideline for Infection Control in Health Care Personnel, 1998* (''1998 Guideline''), *Part E: Epidemiology and Control of Selected Infections Transmitted Among Health Care Personnel and Patients,* and their corresponding recommendations in Part II of the *1998 Guideline:* ''4. Diphtheria;'' ''9. Meningococcal Disease;'' ''12. Pertussis;'' and ''18. *Streptococcus,* group A infection.'' The updated recommendations in the *Draft Guideline* are intended for use by the leaders and staff of Occupational Health Services (OHS) to facilitate providing occupational infection prevention and control (IPC) services to healthcare personnel (HCP) for the management of exposed or infected HCP who may be contagious to others in the workplace.

Since 2015, the Healthcare Infection Control Practices Advisory Committee (HICPAC) has worked with national partners, academicians, public health professionals, healthcare providers, and other partners to develop this *Draft Guideline* as a recommendation for CDC to update sections of the *1998 Guideline.* HICPAC includes representatives from public health, infectious diseases, regulatory and other federal agencies, professional societies, and other stakeholders.

The updated draft recommendations in this *Draft Guideline* are informed by reviews of the *1998 Guideline;* current CDC resources, guidance, and guidelines; and new resources and evidence, when available. This *Draft Guideline* and the updated final Guideline will not be a federal rule or regulation.

Dated: March 1, 2021.

**Sandra Cashman,**

*Executive Secretary, Centers for Disease Control and Prevention.*

[FR Doc. 2021–04515 Filed 3–4–21; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. FDA–2021–N–0033]**

## Morton Grove Pharmaceuticals Inc. et al.; Withdrawal of Approval of Seven Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is withdrawing approval of seven abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**DATES:** Approval is withdrawn as of April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 065428 | Cefprozil Tablets, 250 milligrams (mg) and 500 mg | Morton Grove Pharmaceuticals Inc./Wockhardt USA LLC., 6451 Main St., Morton Grove, IL 60053. |
| ANDA 077699 | Mefloquine Hydrochloride (HCl) Tablets, 250 mg | Hikma Pharmaceuticals USA Inc., 1809 Wilson Rd., Columbus, OH 43228. |
| ANDA 078383 | Pioglitazone HCl Tablets, Equivalent to (EQ) 15 mg base; EQ 30 mg base; EQ 45 mg base. | Neopharma Inc., 211 College Road East, Suite 101, Princeton, NJ 08540. |
| ANDA 078953 | Irinotecan HCl Injection, 40 mg/2 milliliters (mL) (20 mg/mL) and 100 mg/5 mL (20 mg/mL). | Do. |
| ANDA 079049 | Alendronate Sodium Tablets, EQ 5 mg base; EQ 10 mg base; EQ 35 mg base; EQ 70 mg base. | Do. |

| Application No. | Drug | Applicant |
|---|---|---|
| ANDA 090732 | Anastrozole Tablets, 1 mg | Do. |
| ANDA 203161 | Irbesartan Tablets, 75 mg, 150 mg, and 300 mg | Do. |

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of April 5, 2021. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on April 5, 2021 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: February 26, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–04520 Filed 3–4–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–2354]**

### Data Standards; Requirement Begins for the Clinical Data Interchange Standards Consortium Version 1.1 of the Standard for Exchange of Nonclinical Data Developmental and Reproductive Toxicology Implementation Guide and Version 1.6 of the Study Data Tabulation Model; Clarification to Food and Drug Administration Data Standards

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is announcing the date that support will begin for version 1.1 of the Clinical Data Interchange Standards Consortium (CDISC) Standard for Exchange of Nonclinical Data Developmental and Reproductive Toxicology Implementation Guide (SENDIG–DART) and version 1.6 of the Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model (SDTM) and the dates when such new standard and version update will be required in certain submissions. The Agency will update the FDA Data Standards Catalog (Catalog) to reflect these changes. An additional note is added to the Catalog clarifying the requirements for the submission of a simplified trial summary dataset to determine a study start date at the point of submission at the electronic gateway.

**DATES:** Support for version 1.1 of the CDISC SENDIG–DART and version 1.6 of the CDISC SDTM will begin on March 15, 2021. The requirement for electronic submissions to be submitted using version 1.1 of the CDISC SENDIG–DART will begin March 15, 2023, for new drug applications (NDAs), abbreviated new drug applications (ANDAs), and certain biologics license applications (BLAs), and March 15, 2024, for certain investigational new drug applications (INDs). The requirement for electronic submissions to be submitted using version 1.6 of the CDISC SDTM will begin on March 15, 2022.

**ADDRESSES:** You may submit comments as follows.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2020–N–235 for ''Data Standards; Requirements Begin for the Clinical Data Interchange Standards Consortium Version 1.1 of the Standard for Exchange of Nonclinical Data Developmental and Reproductive Toxicology Implementation Guide and Version 1.6 of the Study Data Tabulation Model. Clarification to the FDA Data Standards Catalog.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Bryan Spells, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 240–402–6511, email: *cderdatastandards@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** FDA's CDER is issuing this **Federal Register** notice to announce the date that support will begin for version 1.1 of the CDISC SENDIG–DART and version 1.6 of the CDISC SDTM and the dates when such new standard and version update will be required in certain submissions. The FDA guidance for industry ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data'' (October 2020) (eStudy Data guidance), posted on FDA's Study Data Standards Resources web page at *https://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm,* implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k–1(a)) for study data contained in NDAs, ANDAs, certain BLAs, and certain INDs submitted to CDER or the Center for Biologics Evaluation and Research by specifying the format for electronic submissions. The eStudy Data guidance states that a **Federal Register** notice will specify any new standards and version updates to FDA-supported study data standards that will be added to the Catalog, when the support for such standards and version updates begins or ends, and when the requirement to use such standards and version updates in submissions begins or ends.

Support for version 1.1 of the CDISC SENDIG–DART and version 1.6 of the CDISC SDTM will begin on March 15, 2021, the transition date. The requirement for electronic submissions to be submitted using version 1.1 of the CDISC SENDIG–DART will begin March 15, 2023, for NDAs, ANDAs and certain BLAs, and March 15, 2024, for certain INDs. The requirement for electronic submissions to be submitted using version 1.6 of the CDISC SDTM will begin on March 15, 2022.

Dated: February 26, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–04609 Filed 3–4–21; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–0180]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the generic clearance for the collection of quantitative data on tobacco products and communications.

**DATES:** Submit either electronic or written comments on the collection of information by May 4, 2021.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 4, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 4, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–N–0180 for ''Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

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

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

*OMB Control Number 0910–0810—Extension*

To conduct educational and public information programs relating to tobacco use as authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA's Center for Tobacco Products will conduct research and use a variety of media to inform and educate the public, tobacco retailers, and health professionals about the health risks of tobacco use, how to quit using tobacco products, and FDA's role in regulating tobacco.

To ensure that these educational and public information programs have the highest potential to be received, understood, and accepted by those for whom they are intended, the Center for Tobacco Products will conduct research and develop health messages relating to the control and prevention of disease. In conducting such research, FDA will use quantitative methods (*i.e.,* surveys, experimental studies) for studies about tobacco products. These studies may be used to collect information related to the formative pretesting of tobacco communication messages and other materials directed at consumers. This type of research involves: (1) Assessing audience knowledge, attitudes, behaviors, and other characteristics for the purpose of determining the need for and developing health messages, communication strategies, and public information programs; (2) pretesting these health messages, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions; and (3) adding to the regulatory science knowledge base. Quantitative studies play an important role in exploring areas of research and gathering information because they can be used to summarize a population of interest on key variables or reveal systematic relationships between variables.

Formative pretesting is a staple of best practices in communications research. Obtaining voluntary feedback from intended audiences during the development of messages and materials is crucial for the success of every communication program. The purpose of obtaining information from formative pretesting is that it allows FDA to improve materials and strategies while revisions are still affordable and possible. Formative pretesting can also avoid potentially expensive and dangerous unintended outcomes caused by audiences interpreting messages in a way that was not intended by the drafters. By maximizing the effectiveness of messages and strategies for reaching targeted audiences, the frequency with which tobacco communication messages need to be modified should be greatly reduced.

The voluntary information collected will serve the primary purpose of providing FDA information about the perceived effectiveness of messages, advertisements, and materials in reaching and successfully communicating with their intended audiences. Quantitative testing messages and other materials with a sample of the target audience will allow FDA to refine messages, advertisements, and materials, including questionnaires or images, directed at consumers while the materials are still in the developmental stage.

In addition, quantitative information is needed by FDA to track changes in response to policy and regulatory actions and to expand the tobacco regulatory science base by providing information on behavior, knowledge, and attitudes about tobacco products, including postmarketing surveillance of tobacco products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Screener | 485,580 | 1 | 485,580 | 0.083 (5 minutes) | 40,465 |
| Self-Administered Surveys | 133,728 | 1 | 133,728 | 0.33 (20 minutes) | 44,576 |
| Total | | | | | 85,041 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Number of respondents to be included in each new survey will vary, depending on the nature of the material or message being tested and the target audience. Table 1 provides examples of the types of activities that may be administered and estimated burden levels during the 3-year period. Time to read, review, or complete the activity is built into the ''Average Burden per Response'' figures. Our estimated burden for the information collection reflects an overall increase of 60,000 hours and a corresponding increase of 461,808 responses. We attribute the adjustment to an increase in the number of new quantitative studies that are anticipated underneath this information collection during the next 3 years (proposed extension).

Dated: March 1, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–04606 Filed 3–4–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–P–1189]**

### Canned Tuna Deviating From the Standard of Identity; Amendment of Temporary Marketing Permit

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is amending StarKist Seafood Company's temporary permit to market test canned tuna. The temporary permit is amended to add three additional manufacturing locations and to increase the amount of test product. This amendment will allow the applicant to continue to test market the test product and collect data on consumer acceptance of the test product.

**FOR FURTHER INFORMATION CONTACT:** Marjan Morravej, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 20, 2014 (79 FR 35362), we issued a notice announcing that we had issued a temporary permit to StarKist Seafood Company, 225 North Shore Dr., Pittsburgh, PA 15212, to market test products identified as canned tuna products. The permit allowed for the test product to be manufactured at Galapesca S.A., Km. 12.5 Via A Duale, Guayaquil, Ecuador, and StarKist Samoa Co., 368 Atu'u Rd., Pago Pago, American Samoa 96799. We issued the permit to facilitate market testing of products that deviate from the requirements of the standard of identity for canned tuna in 21 CFR 161.190, which was issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

In the **Federal Register** of March 7, 2016 (81 FR 11813), we issued a notice announcing that we were extending the temporary market permit issued to StarKist Seafood Company. The extension allows the applicants to continue to measure consumer acceptance of the products and assess the commercial feasibility of the products, in support of a petition to amend the standard of identity for canned tuna. The new expiration date of the permit will be either the effective date of a final rule amending the standard of identity for canned tuna that may result from the petition or 30 days after denial of the petition.

Under our regulations at 21 CFR 130.17(f), we are amending the temporary permit issued to StarKist Seafood Company, to allow the test product to be manufactured at three additional plants: Tropical Canning (Thailand) Public Co., LTD., 1/1 M.2 T.Thungyai, Hatyai, Songkhla 90110, Thailand; ISA Value Co., Ltd., 44/4 Moo1, Petchkasem Road, Yaicha, Sampran, Nakornpathom 73110, Thailand; and Tri-Marine (Solomon Islands), Soltuna Ltd., 1 Tuna Dr., Noro, Western Province, Solomon Islands. We are also amending the temporary permit to increase the amount of test product to be market tested to 213,500,000 pounds (96,841,971 kilograms) in retail cans of various sizes. All other conditions and terms of this permit remain the same.

Dated: February 26, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–04607 Filed 3–4–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the COVID–19 Health Equity Task Force

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the COVID–19 Health Equity Task Force (Task Force) will hold a virtual meeting on March 26, 2021. The purpose of this meeting is to discuss equitable vaccine access and acceptance. This meeting is open to the public and will be live-streamed at *www.hhs.gov/live.* Information about the meeting will be posted on the HHS Office of Minority Health website: *www.minorityhealth.hhs.gov/healthequitytaskforce/* prior to the meeting.

**DATES:** The Task Force meeting will be held on Friday, March 26, 2021, from approximately 12 p.m. to 3 p.m. ET (times are tentative and subject to change). The confirmed time and agenda will be posted on the COVID–19 Health Equity Task Force website: *www.minorityhealth.hhs.gov/*

*healthequitytaskforce/* when this information becomes available.

**FOR FURTHER INFORMATION CONTACT:** Samuel Wu, Designated Federal Officer for the Task Force; Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852.

Phone: 240–453–6173; email: *COVID19HETF@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** *Background:* COVID–19 Health Equity Task Force (Task Force) was established by Executive Order 13995, dated January 21, 2021. The Task Force is tasked with developing a set of recommendations to the President, through the Coordinator of the COVID–19 Response and Counselor to the President (COVID–19 Response Coordinator) for mitigating the health inequities caused or exacerbated by the COVID–19 pandemic and for preventing such inequities in the future. The Task Force shall submit a final report to the COVID–19 Response Coordinator addressing any ongoing health inequities faced by COVID–19 survivors that may merit a public health response, describing the factors that contributed to disparities in COVID–19 outcomes, and recommending actions to combat such disparities in future pandemic responses.

The meeting is open to the public and will be live-streamed at *www.hhs.gov/live.* A public comment session will be held during the meeting. Pre-registration is required to provide public comment during the meeting. To pre-register to attend or to provide public comment, please send an email to *COVID19HETF@hhs.gov* and include your name, title, and organization by close of business on Friday, March 19, 2021. Comments will be limited to no more than three minutes per speaker and should be pertinent to the meeting discussion. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute-taking purposes. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing *COVID19HETF@hhs.gov* no later than close of business Thursday, April 1, 2021. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact: *COVID19HETF@hhs.gov* and reference this meeting. Requests for special accommodations should be made at least ten (10) business days prior to the meeting.

Dated: March 1, 2021.

**Samuel Wu,**

*Designated Federal Officer, COVID–19 Health Equity Task Force.*

[FR Doc. 2021–04605 Filed 3–4–21; 8:45 am]

**BILLING CODE 4150–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research (K01).

*Date:* April 1, 2021.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–Y, Bethesda, MD 20892, (301) 827–7911, *lindsay.garvin@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: March 1, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04523 Filed 3–4–21; 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, 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 Panel: Co-Occurring Conditions, Data Science, and Clinical Trials Readiness in Down Syndrome.

*Date:* March 25, 2021.

*Time:* 9:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 19–386 Environmental Risks for Psychiatric Disorders: Biological Basis of Pathophysiology.

*Date:* March 25, 2021.

*Time:* 3:00 p.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Stress, Emotion, Health and Reward.

*Date:* March 26, 2021.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Andrea B Kelly, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

*Date:* March 30–31, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD19–029: The Intersection of Sex and Gender Influences on Health and Disease.

*Date:* March 30–31, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II ,6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Latha Meenalochana Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Veterinary and Comparative Medicine.

*Date:* March 30, 2021.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–613–5228, *capraramg@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV/AIDS Related Behavioral Research.

*Date:* March 30, 2021.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 435–2591, *pamela.jeter@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: March 1, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04516 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. This meeting is a virtual meeting and is open to the public. Written comments will be accepted and registration is required to present oral comments. Information about the meeting and registration are available at *https://ntp.niehs.nih.gov/go/165.*

**DATES:**

*Meeting:* Scheduled for April 23, 2021, 12:30 p.m.–5:00 p.m. Eastern Daylight Time (EDT).

*Written Public Comment Submissions:* Deadline is April 16, 2021.

*Registration for Oral Comments:* Deadline is April 16, 2021.

**ADDRESSES:**

*Meeting Web page:* The preliminary agenda, registration, and other meeting materials are available at *https://ntp.niehs.nih.gov/go/165.*

*Virtual Meeting:* The URL for viewing the virtual meeting will be provided on the meeting web page.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sheena Scruggs, Designated Federal Official for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3355, Fax: 301–451–5759, Email: *sheena.scruggs@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

**SUPPLEMENTARY INFORMATION:** The BSC will provide input to the NTP on programmatic activities and issues. The preliminary agenda topics include presentations from two of the Division of the National Toxicology Program (DNTP)'s research program areas. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting web page.

*Meeting Attendance Registration:* The meeting is open to the public with time scheduled for oral public comments. Registration is not required to view the virtual meeting; the URL for the virtual meeting is provided on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*). TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

*Written Public Comments:* NTP invites written public comments. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is April 16, 2021. Written public comments should be submitted through the meeting web page. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP web page, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

*Oral Public Comment Registration:* The agenda allows for two formal public comment periods—one comment period for each program area (up to 3 commenters, up to 5 minutes per speaker, per topic). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/165* by April 16, 2021. Oral comments will be received only during the formal comment periods indicated on the preliminary agenda. Oral comments will only be by teleconference line. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration is on a first-come, first-served basis. Each organization is allowed one time slot per topic. After the maximum number of speakers per comment period is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Commenters will be notified approximately one week

before the meeting about the actual time allotted per speaker.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to *NTP-Meetings@icf.com* by April 16, 2021.

*Meeting Materials:* The preliminary meeting agenda is available on the meeting web page (*https://ntp.niehs.nih.gov/go/165*) and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

*Background Information on the BSC:* The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, epidemiology, risk assessment, carcinogenesis, mutagenesis, cellular biology, computational toxicology, neurotoxicology, genetic toxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets periodically. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: March 2, 2021.

**Brian R. Berridge,**

*Associate Director, National Toxicology Program.*

[FR Doc. 2021–04596 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Environmental Health Sciences Special Emphasis Panel: U.S. India Collaborative Environmental Health Research Program.

*Date:* March 10–11, 2021.

*Time:* 10:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Stone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, (984) 287–3288, *Varsha.shukla@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 Environmental Health Sciences Special Emphasis Panel: Emerging Research Opportunities in Environmental Health Sciences-Population-Based Studies.

*Date:* March 19, 2021.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Stone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984–287–3328, *laura.thomas@nih.gov*.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel: RISE R25 Grant Applications.

*Date:* March 30, 2021.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Stone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984–287–3328, *laura.thomas@nih.gov*.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel: ViCTER Award R01 Grant Applications.

*Date:* March 31, 2021.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Stone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Alfonso R. Latoni, Ph.D., Chief and Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984–287–3279, *alfonso.latoni@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 26, 2021.

**David W Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04526 Filed 3–4–21; 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, 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; Member Conflict: Lung Disease.

*Date:* March 30–31, 2021.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, (301) 451–8754, *nussb@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Aging Systems and Geriatrics and Effect of Coronavirus on Brain Function.

*Date:* March 30, 2021.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, (301) 435–1034, *beitinsi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technologies.

*Date:* April 1, 2021.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1606, *charlesvi@mail.nih.gov*.

*Name of Committee:* Applied Immunology and Disease Control Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

*Date:* April 1–2, 2021.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *jig@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Electronic Nicotine Delivery Systems: Basic Mechanisms of Health Effects—PAR Panel.

*Date:* April 1–2, 2021.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, (240) 498–7546, *diramig@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of the Vascular and Hematological Systems.

*Date:* April 1, 2021.

*Time:* 9:30 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: AIDS and AIDS-Related Applications.

*Date:* April 1, 2021.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 806–6596, *rubertm@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pain and Perception.

*Date:* April 1, 2021.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–7490, *brianscott@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Child Obesity and Behavioral Health.

*Date:* April 1, 2021.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ahlishia Jnae Shipley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3222, MSC 7816, Bethesda, MD 20892, (301) 480–8976, *shipleyaj@mail.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: March 2, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04592 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA–AA–20–010—Collaborative Partnership between Research Centers in Minority Institutions (RCMI) and Alcohol Research Centers.

*Date:* April 1, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, NIH, 6700 B Rockledge Drive, Room 2118, Bethesda, MD 20892, (301) 443–2861, *marmillotp@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Review Subcommittee Member Conflict Review Panel.

*Date:* April 9, 2021.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, NIH, 6700 B Rockledge Drive, Room 2118, Bethesda, MD

20892, (301) 443–2861, *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: March 1, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04519 Filed 3–4–21; 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, 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; PAR 20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

*Date:* March 30–31, 2021.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Manas Chattopadhyay, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3An12N, 45 Center Drive, Bethesda, MD 20892, 301–827–5320, *manasc@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Disease and Immunology B.

*Date:* March 31–April 1, 2021.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Uma Basavanna, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1199, *uma.basavanna@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Coronavirus Drug Discovery and Development.

*Date:* March 31–April 1, 2021.

*Time:* 9:30 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–1742, *kaushikbasun@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

*Date:* March 31, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–20–140: Catalytic Tool and Technology Development in Kidney, Urologic and Hematologic Diseases (R21).

*Date:* March 31, 2021.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular Physiology and Pathology.

*Date:* March 31, 2021.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@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: February 26, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04513 Filed 3–4–21; 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, 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; RFA–DK–20–021.

*Date:* March 30–31, 2021.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, 6707 Democracy Boulevard, Room 7007, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.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: March 1, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04595 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Cancer Institute Special Emphasis Panel; NCI Predoc to Postdoc Fellow Transition Award (F99/K00).

*Date:* March 23–24, 2021.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W604, Rockville, Maryland 20850 (Telephone Conference Call).

*Contact Person:* Scott A. Chen, Ph.D., Scientific Review Officer, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W604, Rockville, Maryland 20850, 240–276–6038, *chensc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04517 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be held virtually and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting Website (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Board of Scientific Advisors.

*Date:* March 15, 2021.

*Time:* 1:00 p.m. to 5:30 p.m.

*Agenda:* Director's Report; RFA, RFP, and PAR Concept Reviews; and Scientific Presentations.

*Place:* National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

*Date:* March 16, 2021.

*Time:* 1:00 p.m. to 5:30 p.m.

*Agenda:* RFA, RFP, and PAR Concept Reviews; and Scientific Presentations.

*Place:* National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

*Contact Person:* Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: BSA: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04518 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 on Drug Abuse Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders (DP1 Clinical Trial Optional).

*Date:* March 11, 2021.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5833, *ivan.navarro@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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 26, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04514 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIEHS.

*Date:* March 28–30, 2021.

*Closed:* March 28, 2021, 4:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate programmatic concerns and personnel qualifications.

*Open:* March 29, 2021, 10:00 a.m. to 11:30 a.m.

*Agenda:* Q & A Session.

*Closed:* March 29, 2021, 11:45 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate programmatic concerns and personnel qualifications.

*Open:* March 29, 2021, 2:00 p.m. to 4:00 p.m.

*Agenda:* Poster Sessions.

*Closed:* March 29, 2021, 4:00 p.m. to 4:45 p.m.

*Agenda:* To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

*Open:* March 30, 2021, 10:00 a.m. to 11:15 a.m.

*Agenda:* Q & A Session.

*Closed:* March 30, 2021, 11:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate to review and evaluate programmatic concerns and personnel qualifications.

*Place:* National Institute of Environmental Health Science, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

*Contact Person:* Darryl C. Zeldin, Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Sciences, NIH, 111 T. W. Alexander Drive, Mail drop MSC A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 1, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04522 Filed 3–4–21; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute On Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIA.

*Date:* May 4–6, 2021.

*Closed:* May 04, 2021, 9:00 a.m. to 9:45 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Open:* May 04, 2021, 9:45 a.m. to 11:45 a.m.

*Agenda:* Committee discussion, individual presentations, laboratory overview.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 04, 2021, 11:45 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Open:* May 04, 2021, 2:30 p.m. to 4:00 p.m.

*Agenda:* Committee discussion, individual presentations, laboratory overview.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 04, 2021, 4:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 05, 2021, 9:00 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Open:* May 05, 2021, 9:30 a.m. to 11:00 a.m.

*Agenda:* Committee discussion, individual presentations, laboratory overview.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 05, 2021, 11:00 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Open:* May 05, 2021, 2:30 p.m. to 3:30 p.m.

*Agenda:* Committee discussion, individual presentations, laboratory overview.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview

Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 06, 2021, 9:00 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Open:* May 06, 2021, 9:30 a.m. to 11:30 a.m.

*Agenda:* Committee discussion, individual presentations, laboratory overview.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Closed:* May 06, 2021, 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

*Contact Person:* Luigi Ferrucci, MD, Ph.D., Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: March 2, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04593 Filed 3–4–21; 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; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Allergy and Infectious Diseases Special Emphasis Panel; Multidisciplinary Studies to Improve Understanding of Influenza Transmission (U19 Clinical Trial Optional).

*Date:* April 7–8, 2021.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20852, (240) 669–5048, *gaoL2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04512 Filed 3–4–21; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sleep Disorders Research Advisory Board.

*Date:* April 1, 2021.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* Summary of sleep and circadian research activities at NIH and coordination with other federal agencies; discussion of NIH Sleep Disorders Research Plan Revision.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Telephone Access:* 1–646–828–7666 (Meeting ID: 161 330 2517 Passcode: 723398).

*Virtual Access: https://nih.zoomgov.com* (Meeting ID: 161 330 2517, Passcode: 723398).

*Contact Person:* Marishka Brown, BS, MS, Ph.D., Health Scientist Administrator, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institute of Health, 6701 Rockledge Drive, Room 10183, Bethesda 20814–7952, 301–827–7822, *marishka.brown@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 15 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: March 1, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04524 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* May 26–27, 2021.

*Open:* May 26, 2021, 1:00 p.m. to 5:30 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

*Open session will be videocast from this link: https://videocast.nih.gov/*

*Closed:* May 27, 2021, 1:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Robert Finkelstein, Ph.D., Director of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 26, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–04521 Filed 3–4–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Issuance of Final Determination Concerning Certain Fixed and Portable Ceiling Lifts

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fixed and portable ceiling lifts for healthcare purposes. Based upon the facts presented, CBP has concluded in the final determination that the ceiling lifts would not to be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on March 1, 2021. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on March 1, 2021, CBP issued a final determination concerning the country of origin of fixed and portable ceiling lifts for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H311763, was issued at the request of the party-at-interest, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the fixed and portable ceiling lifts would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement. Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: March 1, 2021.

**Joanne R. Stump,**

*Acting Executive Director, Regulations and Rulings,Office of Trade.*

**HQ H311763**

**March 1, 2021**

**OT:RR:CTF:VS H311763 AP**

**CATEGORY:** Origin

F. Scott Galt, Partner
Armstrong Teasdale LLP
CIPP/E
7700 Forsyth Blvd., Suite 1800
St. Louis, MO

**RE:** U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Fixed and Portable Ceiling Lifts

Dear Mr. Galt:

This is in response to your request of June 12, 2020, on behalf of Span America, Inc. (''SA''), for a final determination concerning the country of origin of certain fixed and portable ceiling lifts for healthcare purposes. This request is being sought because your client wants to confirm eligibility of the merchandise for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*). SA is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a).

**FACTS:**

SA is a U.S.-based manufacturer of equipment and accessories for use in medical facilities. Its corporate headquarters and principal manufacturing facility is located in Greenville, South Carolina. SA manufactures fixed and portable ceiling lifts used in clinical or home settings to safely lift and/or transport immobilized individuals. SA produces two types of ceiling lifts: The Savaria FL Fixed Lift (''fixed lift'') and the Savaria PL Portable Lift (''portable lift''). The fixed and portable lifts are powered with rechargeable lithium ion batteries. Users can operate the lifts through the push buttons located on the spreader bars or a remote control. The fixed lift includes buttons that control vertical and lateral movement, while the portable lift only contains buttons to raise and lower the lift.

The fixed lift attaches to ceiling-mounted track systems. Each fixed lift consists of: (1) A motor unit base which connects to the ceiling track system; (2) a spreader bar that is a horizontal bar with hooks on each end to which slings are attached used to support a person's

weight; and (3) a retractable belt which extends down from the motor unit to the spreader bar and connects these two components. The lift's base unit contains a motor that controls the retractable belt and allows the base unit to move laterally along the ceiling tracks. The base unit also has a display that shows the lift's battery life. Depending on the model, the fixed lift can lift 286, 440, or 600 pounds.

Each fixed lift is comprised of 124 specifically designed component parts and 245 total component parts sourced from Canada, China, the United States, Italy, and Taiwan, as reflected in the bill of materials. Most of the parts are from Canada and China. Some of the significant components of the fixed lift from Canada and China are: The lithium ion charger from China, the main printed circuit board assembly (''PCBA'') from China, the handset from China, the charging station assembly from Canada, the battery from China, and the carry bar assembly from Canada. In addition, the fixed lift is composed of subassemblies that contain the moving parts for the lifts which are manufactured in Greenville, South Carolina: The ''mega motor'' subassembly, comprised of two specifically designed parts and two total parts; the ''high limit'' subassembly, comprised of eight specifically designed parts and 18 total parts; the ''motorized trolley'' subassembly, comprised of 16 specifically designed parts and 25 total parts; the ''manual trolley'' subassembly, comprised of six specifically designed parts and nine total parts; and the ''drum'' subassembly, comprised of 11 specifically designed parts and 23 total parts. Specifically, for example, the ''motorized trolley'' subassembly consists of: A gear motor trolley from China, a bloc trolley from China, a shaft retaining ring from China, a motorized trolley wheel from China, a spacer idler from China, a gear wheel from China, a trolley idler gear from China, and a trolley motor gear from China. These components are assembled together in South Carolina to create the motorized trolley. The final assembly of the fixed lift in South Carolina then involves the combination of all subassemblies and component parts not already incorporated into a subassembly.

The portable lift is not permanently mounted to overhead tracks. Rather, it clips to and detaches from overhead locations of the user's choice. The motor unit of the portable lift is located inside the spreader bar, and the belt is located inside the motor assembly. Depending on the model, the portable lift can lift 286 or 440 pounds. Each portable lift is comprised of 80 specifically designed component parts and 175 total component parts sourced from Canada, China, the United States, Italy, and Taiwan, as reflected in the bill of materials. Most of the parts are manufactured in Canada and China. The most significant components of the portable lift are: The portable handset from China, the bearing block from China, the portable battery from China, the main PCBA from China, the portable carry bar from China, and the worm gear from Canada.

Similar to the fixed lift, the portable lift has subassemblies that contain the moving parts for the lifts, which are manufactured in Greenville, South Carolina: The ''spool'' subassembly comprised of 12 specifically designed parts and 23 total parts; the ''high limit'' subassembly, comprised of nine specifically designed parts and 18 total parts; the ''cabin port'' subassembly comprised of seven specifically designed parts and seven total parts; and the ''motor'' subassembly containing two specifically designed parts and two total parts. Specifically, for example, the ''spool'' subassembly consists of: A strap from China, a pivot from China, a brake from China, a small disk from China, a spool from China, and a helical gear from Canada. As with the fixed lift, the final assembly of the portable lift involves the combination of all subassemblies and component parts not already incorporated into a subassembly.

**ISSUE:**

What is the country of origin of the subject and portable lifts for purposes of U.S. Government procurement?

**LAW AND ANALYSIS:**

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The Federal Acquisition Regulations, 48 CFR 25.003, define ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines ''designated country end product'' as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article,

provided that the value of those incidental services does not exceed that of the article itself.

Canada, Italy, and Taiwan are WTO GPA countries. China is not.

Most of the individual components of the fixed lift are manufactured in Canada while most of the components of the portable lift are manufactured in China. In addition, the parts of the ''high limit,'' ''motorized trolley,'' and ''manual trolley'' subassemblies of the fixed lift are predominantly of Chinese origin. The ''mega motor'' subassembly parts of the fixed lift are of Italian and Taiwanese origin and the ''drum'' subassembly parts of the fixed lift are predominantly of Canadian origin. The parts of the ''high limit'' and ''cabin port'' subassemblies of the portable lift are predominantly of Chinese origin, while the parts of the ''motor'' subassembly of the portable lift are entirely of Italian and Taiwanese origin, and the parts of the ''spool'' subassembly of the portable lift are predominantly of U.S. and Canadian origin. The subassemblies are assembled in the U.S. The final assembly in the U.S. fully integrates the subassemblies and the component parts not already incorporated into a subassembly. The final assembly performed in the U.S. as described is substantial and meaningful, and requires a good deal of skill, precision, and technical expertise as well as sophisticated testing and inspection of the products. The lift subassemblies and component parts are substantially transformed as a result of the assembly operations performed in the U.S. to produce the fully functional and operational fixed and portable lifts.

Therefore, the instant fixed and portable lifts would not be considered to be the products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). As to whether the fixed and portable lifts assembled in the United States qualify as ''U.S.-made end product,'' we encourage you to review the recent court decision in *Acetris Health, LLC* v. *United States,* 949 F.3d 719 (Fed. Cir. 2020), and to consult with the relevant government procuring agency.

**HOLDING:**

The subject fixed and portable lifts would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

You should consult with the relevant government procuring agency to determine whether the lifts qualify as ''U.S.-made end product'' for purposes of the Federal Acquisition Regulations implementing the TAA.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request pursuant to 19 CFR 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Joanne R. Stump,

Acting Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2021–04574 Filed 3–4–21; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[212A2100DD/AAKC001030/ A0A501010.999900253G]**

### Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of Iowa

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On December 11, 2020, the Ponca Tribe of Nebraska and the State of Iowa submitted a compact governing certain forms of Class III gaming in Iowa. This notice announces that the Compact between the Ponca Tribe of Nebraska and the State of Iowa is taking effect.

**DATES:** The compact takes effect on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the Compact between the Ponca Tribe of Nebraska and the State of Iowa. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

**Darryl LaCounte,**

*Director, Bureau of Indian Affairs Exercising the Delegated Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2021–04499 Filed 3–4–21; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[201D0102DM_DS62470000_ DMSN00000.000000_DX.62407.CEN00000; OMB Control Number 1085–0001]**

### Agency Information Collection Activities; Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses

**AGENCY:** Indian Arts and Crafts Board, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Department of the Interior is proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before April 5, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number 1085–0001 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov,* or by telephone at 202–208–7072. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing

collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 17, 2020 (85 FR 58069). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. 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.

*Abstract: The Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The Source Directory is a listing of American Indian and Alaska Native owned and operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's website http://www.doi.gov/iacb.*

*The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the Source Directory include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately owned-and-operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the Source Directory are arranged alphabetically by State.*

*The Director of the IACB uses this information to determine whether an individual or business applying to be listed in the Source Directory meets the requirements for listing. The approved application will be printed in the Source Directory. The Source Directory is updated as needed to include new businesses and to update existing information. Applicants or current enrollees submit Form DI–5001, ''Source Directory Business Listing Application'' which collects the following information:*

- *Type of listing they are applying for:*
  - ☐ *New listing;*
  - ☐ *Renewal/changes;*
  - ☐ *Individual; or*
  - ☐ *Group.*
- *Business name;*
- *Manager and owner name, along with Tribal affiliation; and*
- *Tribal or group affiliation of signer.*

*Title of Collection: Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses.*

*OMB Control Number: 1085–0001.*

*Form Number: DI–5001.*

*Type of Review: Extension of a currently approved collection.*

*Respondents/Affected Public: Individuals/households.*

*Total Estimated Number of Annual Respondents: 100.*

*Total Estimated Number of Annual Responses: 100.*

*Estimated Completion Time per Response: 15 minutes.*

*Total Estimated Number of Annual Burden Hours: 25.*

*Respondent's Obligation: Required to obtain or retain a benefit.*

*Frequency of Collection: On occasion.*

*Total Estimated Annual Nonhour Burden Cost: None.*

*An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.*

*The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).*

**Jeffrey Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–04620 Filed 3–4–21; 8:45 am]

**BILLING CODE 4334–63–P**

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## DEPARTMENT OF THE INTERIOR

**[PPWOIRADA1/PRCRFRFR6.XZ0000/PR.RIRAD1801.00.1; OMB Control Number 1093–0006]**

## Agency Information Collection Activities; Administration of Volunteer.gov website and Associated Volunteer Activities

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of the Interior (Interior) is proposing to renew an information collection with revisions.

**DATES:** Interested persons are invited to submit comments on or before May 4, 2021.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1093–0006 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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.

*Abstract:* Various laws, statutes, and regulations, to include the Public Lands Corps Act (16 U.S.C. 1721 *et. seq.*), the Outdoor Recreation Authority (16 U.S.C. 4601), Volunteers in the National Forests Program (16 U.S.C. 558 a-d), and the Forest Foundation Volunteers Act (16 U.S.C. 583j), authorize Federal land management agencies to work with volunteers, youth, and partner organizations to plan, develop, maintain, and manage projects and service activities on public lands and adjacent projects throughout the nation. We use volunteers, youth programs, and partnerships to aid in disaster response, interpretive functions, visitor services, conservation measures and development, research and development, recreation, and or other activities as allowed by an agency's policy and regulations. Providing, collecting, and exchanging written and electronic information is required from potential and selected program participants of all ages so they can access opportunities and benefits provided by agencies guidelines. Those under the age of 18 years must have written consent from a parent or guardian to participate in volunteer activities.

In this revision, Interior will request OMB approval to assume the management and responsibility of common forms OF–301, OF–301a, and OF–301b from the Department of Agriculture—U.S. Forest Service (currently approved under OMB Control No. 0596–0080). These forms, available for prospective volunteers to complete electronically or as paper forms, serve two functions:

- Recruiting potential volunteers, and
- Formalizing agreements between current volunteers and the agencies with which they are volunteering.

The customer relationship management web-based portal, Volunteer.gov, is the agencies' response to meeting the public's request for improved digital customer services to access and apply for engagement opportunities. Under one security platform parameter, the Volunteer.gov website provides prospective and current program participants the ability to establish an account for electronic submission of program applications and to obtain status of applications and enrollments. Planned future functionality will provide information digitally on benefits and requirements, and will facilitate improved tracking of volunteer service hours. Currently, these data points are tracked manually and are accessible from agency volunteer program coordinators.

This information collection specifically minimizes the burden on the respondents. While electronic records provide a means to streamline data collection and allow participant access to track benefits and control the sharing of their data, the participating agencies will continue to provide accessible paper versions of the volunteer forms upon request and while the functionality in the web-based portal is being built.

**Participating Agencies**

- *Department of the Interior:* All Interior offices and units, including National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, Office of Surface Mining Reclamation and Enforcement, and U.S. Geological Survey.
- *Department of Agriculture:* U.S. Forest Service and Natural Resources Conservation Service.
- *Department of Defense:* U.S. Army Corps of Engineers.
- *Department of Commerce:* National Oceanic and Atmospheric Administration—Office of National Marine Sanctuaries.

**Common Forms**

*Forms OF–301—Volunteer Application:* Individuals interested in volunteering may access the Volunteer.gov website to complete an on-line application on the *Volunteer.gov* website. Alternatively, they may contact any agency listed above to request a Volunteer Application (Form OF–301). We collect the following information from applicants via Form OF–301:

- Name and contact information (address, telephone number, and email address);
- Date of birth (proposed new data field);
- Preferred work categories;
- Interests;
- Citizenship status;
- Available dates and preferred location;
- Physical limitations; and
- Lodging preferences.

Information collected using this form or *Volunteer.gov* assists agency volunteer coordinators and other personnel in matching volunteers with agency opportunities appropriate for an applicant's skills, physical condition, and availability. We are proposing to collect date of birth to be used along with other unique identifiers for each volunteer applicant. Using date of birth will allow all participating agencies across locations to better track applicants via the Volunteer.gov website.

*Forms OF–301A—Volunteer Service Agreement:* We use this form to establish agreements for volunteer services between Federal agencies and individual or group volunteers, to include eligible international volunteers. We require the signature of parents or guardians for all applicants under 18 years of age. We collect the following information from volunteers via Form OF–301A:

• Name and contact information (address, telephone number, and email address);
• Date of birth (proposed new data field);
• Citizenship information; and,
• Emergency contact information.

Forms OF–301A describe the service a volunteer will perform, and asks a volunteer to confirm their understanding of the purpose of the volunteer program, their fitness and ability to perform the duties as described, and whether they consent to being photographed. We are proposing to collect date of birth to be used along with other unique identifiers for each volunteer applicant. Using date of birth will allow all participating agencies across locations to track their volunteer hours.

*Forms OF–301B—Volunteer Group Sign-up:* We use this form to document awareness and understanding by adult individuals in groups about the volunteer activities between a Federal agency and a partner organization with group participants, and accompanies the Form OF–301a. We collect the following information from volunteers via Form OF–301b:

• Name and contact information (address, telephone number, and email address);
• Month and year of birth (proposed new data field);
• Confirmation of understanding of the purpose of the volunteer program;
• Fitness and ability to perform the duties as described; and
• Whether they consent to being photographed.

We are proposing to collect month and year of birth to be used along with other unique identifiers for each volunteer applicant. Using month and year of birth will allow all participating agencies across locations to track their volunteer hours across positions.

Each participating agency must request OMB approval of, and report their own burden associated with, the use of common forms OF–301, OF–301a, and OF–301b in order to be authorized to participate in this information collection. Interior will not assume the burden for any agencies other than its own bureaus and offices that participate in the volunteer program.

Additionally, we are proposing to change the title of this information collection from ''Natural and Cultural Resource Agencies Customer Relationship Management'' to ''Administration of Volunteer.gov website and Associated Volunteer Activities'' to clarify the purpose of the information collection for the public.

*Title of Collection:* Administration of *Volunteer.gov* website and Associated Volunteer Activities.

*OMB Control Number:* 1093–0006.

*Form Number:* OF–301, OF–301A, and OF–301B.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Public:* Individuals and private sector (cooperating associations and partner organizations) interested in volunteer opportunities.

*Total Estimated Number of Annual Respondents:* 36,333.

*Total Estimated Number of Annual Responses:* 1,431,020.

*Estimated Completion Time per Response:* Completion time varies from 5 minutes to 15 minutes, depending on the function being performed.

*Total Estimated Number of Annual Burden Hours:* 160,757.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Typically once per year.

*Total Estimated Annual Nonhour Burden Cost:* There are no non-hour cost burdens associated with this information collection.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Jeffrey Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–04626 Filed 3–4–21; 8:45 am]

**BILLING CODE 4334–63–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0031515; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent to Repatriate Cultural Items: Mississippi Department of Archives and History, Jackson, MS

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Mississippi Department of Archives and History (MDAH), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that some of the cultural items listed in this notice meet the definition of sacred objects and some of the other cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the MDAH. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the MDAH at the address in this notice by April 5, 2021.

**ADDRESSES:** Meg Cook, Director of Archaeology Collections, Mississippi Department of Archives and History, Museum Division, 222 North Street, P.O. Box 571, Jackson, MS 39205, telephone (601) 576–6927, email *mcook@mdah.ms.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of Mississippi Department of Archives and History, Jackson, MS, that meet the definition of unassociated funerary objects and sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Items

Between 1989 and 1990, 16 sacred objects were removed from the Austin site (22TU549) in Tunica County, MS. These sacred objects include nine canine burials, one lot of ceramic sherds, one lot of charcoal, one lot of fired clay objects, one lot of faunal bone fragments (other than canine), one lot of lithic debitage, one lot of soil matrix, and one lot of water-screened pit fill. Following consultation with The Chickasaw Nation on the role of the white dog Ofi' Tohbi Ishto' in the Chickasaw Migration story and the desire of the Chickasaw Nation to venerate these animals alongside ancestors in current day reburial practices, MDAH has determined that

the above listed objects are sacred objects.

In April of 1988, MDAH acquired from an unknown donor a collection containing five objects that had been removed from the burial of an individual at the Tom Harris site (22QU574) in Quitman County, MS. Neither the identity of the individual nor the whereabouts of their human remains is known. The unassociated funerary objects include one lot of ceramic sherds, one lot of daub, one lot of lithic debitage, one lot of faunal bone fragments, and one lot of burial fill matrix.

**Determinations Made by the Mississippi Department of Archives and History**

Officials at the Mississippi Department of Archives and History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), five of the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(3)(C), 16 of the cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between all the cultural items described above and The Chickasaw Nation.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Meg Cook, Director of Archaeology Collections, Mississippi Department of Archives and History, Museum Division, 222 North Street, P.O. Box 571, Jackson, MS 39205, telephone (601) 576–6927, email *mcook@mdah.ms.gov,* by April 5, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects and sacred objects to The Chickasaw Nation may proceed.

The Mississippi Department of Archives and History is responsible for notifying the Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas]; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Miami Tribe of Oklahoma; Mississippi Band of Choctaw Indians; Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Osage Nation [previously listed as Osage Tribe] that this notice has been published.

Dated: February 12, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–04568 Filed 3–4–21; 8:45 am]

BILLING CODE 4312–52–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–776–779 (Fourth Review)]**

## Preserved Mushrooms from Chile, China, India, and Indonesia

**Determinations**

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Background**

The Commission instituted these reviews on August 3, 2020 (85 FR 46725) and determined on November 6, 2020 that it would conduct expedited reviews (86 FR 7877, February 2, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on March 1, 2021. The views of the Commission are contained in USITC Publication 5167 (March 2021), entitled *Preserved Mushrooms from Chile, China, India, and Indonesia: Investigation Nos. 731–TA–776–779 (Fourth Review).*

By order of the Commission.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: March 2, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–04613 Filed 3–4–21; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

**[OMB Number 1121–0309]**

## Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: International Terrorism Victim Expense Reimbursement Program Application

**AGENCY:** Office for Victims of Crime, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Office for Victims of Crime, 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.

**DATES:** The Department of Justice encourages public comment and will accept input until May 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Victoria Jolicoeur, Office for Victims of Crime, 810 Seventh Street NW, Washington, DC 20531; by facsimile at (202) 305–2440 or by email, to *ITVERP@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office for Victims of Crime, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* International Terrorism Victim Expense Reimbursement Program (ITVERP) Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Department of Justice is the Office for Victims of Crime, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals victims, surviving family members or personal representatives. Other: Federal Government. This application will be used to apply for the expense reimbursement by U.S. nationals and U.S. Government employees who are victims of acts of international terrorism that occur(red) outside of the United States. The application will be used to collect necessary information on the expenses incurred by the applicant, as associated with his or her victimization, as well as other pertinent information, and will be used by OVC to make an award determination.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete the certification in approximately 45 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this collection is 75 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 2, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–04612 Filed 3–4–21; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Amended Consent Decree Under the Clean Air Act

On March 1, 2021, the Department of Justice simultaneously filed a Complaint and lodged a proposed Consent Decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and the State of Indiana* v. *Steel Dynamics, Inc.,* Civil Action No. 1:21–cv–86.

The United States and the State of Indiana filed a complaint against Steel Dynamics, Inc. (''Steel Dynamics'') alleging violation of the Clean Air Act (''CAA'') at Steel Dynamic's Flat Roll Division and Iron Dynamics Division. The proposed Consent Decree resolves the claims in the Complaint by requiring Steel Dynamics to install a new 300,000 actual cubic feet per minute baghouse to control emissions from the Flat Roll Division's three ladle metallurgical stations and to take steps to improve its recordkeeping and monitoring. Additionally, Steel Dynamics will pay a civil penalty of $475,000 to be split even with the United States and the State of Indiana.

The publication of this notice opens a period for public comment on the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Steel Dynamics,* D.J. Ref. No. 90–5–2–1–11451. 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 email ..... | *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 Amended Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Amended 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 $7.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Patricia McKenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2021–04584 Filed 3–4–21; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On March 1, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Idaho in the lawsuit entitled *United States et al.* v. *P4 Production, L.L.C.,* Civil Action No. 4:21–cv–92.

The proposed Consent Decree would resolve claims the United States and the State of Idaho have brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607 and the Idaho Environmental Protection and Health Act, Idaho Code § 39–101, *et seq.,* against Defendant P4 Production, L.L.C. (''P4'') concerning the Ballard Mine Superfund Site (''Site'') in Caribou County, Idaho. The Shoshone-Bannock Tribes (''the Tribes'') have filed their own complaint regarding the Site.

Under the proposed Consent Decree, current owner P4 agrees to perform the remedial action selected in EPA's 2019 Record of Decision. It will also pay the Plaintiffs' future response costs, $334,972 in reimbursement of EPA's past response costs, and $10,800 in reimbursement of the Tribes' past response costs. In exchange, P4 receives covenants-not-to-sue for all work completed and costs paid.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *P4 Production, L.L.C.,* D.J. Ref. No. 90–11–2–07884/7. 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 email ..... | 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 Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the 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 $57.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $11.50.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2021–04597 Filed 3–4–21; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Justice Programs Office

**[OMB Number 1121–NEW]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New collection; Fourth National Juvenile Online Victimization Study (N–JOV4)

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Office of Justice Programs, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until April 5, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

—Evaluate whether the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used;

—Evaluate whether and if so how the quality, utility, and clarity of the information collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including 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:* New collection.

2. *The Title of the Form/Collection:* Fourth National Juvenile Online Victimization Study (N–JOV4).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Not applicable (new collection).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

State, county, and local law enforcement agencies (LEAs). *Abstract:* The Fourth National Juvenile Online Victimization Study (N–JOV4) will include a pilot study to test data collection instruments and methods and a full survey administration designed to provide national estimates of technology facilitated sex crimes against children as well as details about victim, offenders, and investigations. The National Institute of Justice (NIJ) will use the information gathered in the national study in published reports and statistics. The reports will be made available to the U.S. Congress, practitioners, researchers, students, the media, and the general public via the NIJ website.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Burden Hours for N–JOV4 Pilot Study*

NIJ expects the 25 law enforcement agencies to spend an average of 15 minutes completing the mail screener survey, including the time to read the accompanying letter, identify eligible cases, consider additional search strategies as requested in the cover letter, and answer the questions (25 × 15 minutes = 6.25 hours). NIJ expects the 25 chiefs/department heads/Commanders to spend 20 minutes completing the telephone debriefing about the mail screener (25 × 20 minutes = 8.33 hours). NIJ expects the five internet Crimes Against Children (ICAC) investigators who are asked to complete telephone interviews on specific cases identified in the mail screener to spend an average of 60 minutes of their time which includes the debriefing about the interview (5 × 60 minutes = 5 hours). The total amount of time for the N–JOV4 pilot is 19.58 hours.

**Burden Hours for N–JOV4 National Study**

A total of 2,689 local, county, state and federal law enforcement agencies are included in the national stratified sample. All of these agencies except the three federal agencies will receive a mail screener, resulting a total of 2,686 non-federal agencies. NIJ estimates that the time to complete the screener will be five minutes for agencies with no eligible cases and 10 minutes for agencies with eligible cases, including the time to read the accompanying letter, identify eligible cases, and answer the questions. NIJ estimates that 1,343 (50%) of the law enforcement agencies will complete the screener by mail. Of these, 35% are expected to have at least one case; these agencies will take approximately 10 minutes each to complete the mail screener (470 × 10 = 78.33 hours). The remaining agencies who complete the screener survey by mail are expected to take approximately 5 minutes each to complete the mail screener (873 × 5 = 72.75 hours). This equals a total of 151.08 hours for completing the screener by mail. NIJ estimates that 36 percent of the law enforcement agencies will complete the screener by telephone. NIJ estimates that, of these 967 agencies who complete the screener by telephone, 338 will have a case (338 × 10 = 56.33 hours) and 629 will have no cases (629 × 5 = 52.42 hours) for a total

of 108.75 hours for completing the mail screener by phone. Based on power analysis calculations, case-level telephone interviews will be completed for a sample of 2,000 eligible cases identified in the mail screener. NIJ estimates that the telephone surveys will take an average of 45 minutes, including 5 minutes for introductions and study details, 3 minutes for data retrieval, and 37 minutes for study questions (2,000 × 45 = 1,500 hours). The total amount of time for the N–JOV4 national study is 1,759.83 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,779.41 total burden hours associated with the N–JOV4 pilot study and the national study.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 2, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–04611 Filed 3–4–21; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0016]**

### Nemko North America, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to Nemko North America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of Nemko North America, Inc. (NNA) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

NNA initially received OSHA recognition as a NRTL on June 21, 1991 (56 FR 28579). NNA's most recent renewal was granted on July 14, 2014 for a five-year period expiring on July 14, 2019. NNA submitted a timely request for renewal, dated October 10, 2018 (OSHA–2013–0016–0016), and retains its recognition pending OSHA's final decision in this renewal process. Additionally, Nemko sent a request on January 14, 2020 (OSHA–2013–0016–0017) to remove its Salt Lake City, Utah site from their NRTL scope of recognition. The current addresses of the NNA facilities recognized by OSHA and included as part of the renewal request are:

(1) Nemko USA, Inc., 2210 Faraday Avenue, Suite 150, Carlsbad, California 92008; and

(2) Nemko Canada, Inc., 303 River Road, Ottawa, Canada K1V 1H2.

OSHA evaluated NNA's application for renewal and made a preliminary determination that NNA can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing NNA's renewal application in the **Federal Register** on July 14, 2020 (85 FR 42434). The agency requested comments by July 29, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew NNA's NRTL recognition.

To obtain or review copies of all public documents pertaining to the NNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2013–0016 contains all materials in the record concerning NNA's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350..

#### II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of NNA as a NRTL. OSHA examined NNA's renewal application and all pertinent information related to NNA's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that NNA meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of NNA's recognition to include the terms and conditions of NNA's recognition found in 56 FR 28679. The NRTL scope of recognition for NNA is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/ccl.html.*

This renewal extends NNA's recognition as a NRTL for a period of five years from March 5, 2021.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, NNA must abide by the following conditions of recognition:

1. NNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. NNA must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. NNA must continue to meet the requirements for recognition, including all previously published conditions on NNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of NNA as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04561 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0040]**

## SGS North America, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to SGS North America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of SGS North America, Inc. (SGS) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

SGS initially received OSHA recognition as a NRTL on March 23, 1993 (58 FR 15509). SGS's most recent renewal was on July 14, 2014, for a five-year period ending on July 14, 2019. SGS submitted a timely request for renewal, dated October 2, 2018 (OSHA–2006–0040–0050), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of the SGS facilities recognized by OSHA and included as part of the renewal request are:

(1) SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024;

(2) Consumer Testing Services, SGS Tecnos S.A., C/. Trespaderne 29, Edificio Barajas 1, 28042 Madrid, Spain;

(3) SGS—Baseefa Limited, Rockhead Business Park, Staden Lane, Buxton SK17 9RZ, United Kingdom;

(4) SGS—Fimko, Ltd., Sarkiniementie 3, FI–00210 Helsinki, Finland;

(5) SGS—Guangzhou, 198 Kezhu Road, Scientech Park, Guangzhou Economic & Technology Development District, Guangzhou, Guangdong, China;

(6) SGS—Ningbo, 1–5/F., West of Building 4, Lingyun Industry Park, No. 1177, Lingyun Road, Ningbo National Hi-Tech Zone, Ningbo, Zhejiang, China;

(7) SGS—Shanghai, No. 588 West Jindu Road, Xinqiao Town, Songjiang District 201612, Shanghai, China;

(8) SGS—Shenzhen Branch, No. 1 Workshop, M–10, Middle Section, Science & Technology Park, Nan Shan District, Shenzhen, China; and

(9) SGS—Shunde, 198 Kezhu Road, Scientech Park Building 1, European Industrial Park, No. 1, Shunde South Road, Wusha, Daliang, Shunde District, Foshan, Guangdong, China.

OSHA evaluated SGS's application for renewal and made a preliminary determination that SGS can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing SGS's renewal application in the **Federal Register** on July 14, 2020 (85 FR 42436). The agency requested comments by July 29, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew SGS's NRTL recognition.

To obtain or review copies of all public documents pertaining to the SGS's application, go to

*www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of SGS as a NRTL. OSHA examined SGS renewal application and all pertinent information related to SGS's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of SGS's recognition to include the terms and conditions of SGS's recognition found in 58 FR 15509. The NRTL scope of recognition for SGS is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/sgs.html.* This renewal extends SGS's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);
2. SGS must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and
3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of SGS as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04549 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

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# DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

## TUV Rheinland of North America, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to TUV Rheinland of North America, Inc. (TUVRNA) as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of TUV Rheinland of North America, Inc. (TUVRNA) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

TUVRNA initially received OSHA recognition as a NRTL on August 16, 1995 (60 FR 42594). TUVRNA's most recent renewal was on July 30, 2014, for a five-year period, expiring on July 30, 2019. TUVRNA submitted a timely request for renewal, dated August 16, 2018 (OSHA–2007–0042–0035), and retains its recognition pending OSHA's final decision in this renewal process. The current addresses of TUVRNA facilities recognized by OSHA and included as part of the renewal request are:

1. TUVRNA Newtown, 12 Commerce Road, Newtown, Connecticut 06470;
2. TUVRNA Pleasanton, 1279 Quarry Lane, Suite A, Pleasanton, California 94566;
3. TUV Rheinland LGA Products GmbH (Germany), Am Grauen Stein 29, Koln, NRW 51105 Germany;
4. TUV Rheinland Japan Ltd., Global Technology Assessment Center, 4–25–2 Kita-Yamata, Tsuzuki-ku, Yokohama, Kanagawa, 224–0021 Japan;
5. TUV Rheinland (Shenzhen) Co., Ltd., 1F East & 2–4F, Cybio Technology Building No.

1, No. 16, Keibei 2nd Road High-Tech Industrial Park North, Nashan District, 518057 Shenzhen, China;

6. TUV Rheinland (Shanghai) Co. Ltd, TUV Rheinland Building No. 177, Lane 777, West Guangzhong Road Zhabei District, Shanghai 200072, P.R. China;

7. TUV Rheinland Taiwan Ltd., 11F, No. 758, Sec.4, Bade Road, Songshan District, Taipei City 105, Taiwan; and

8. TUV Rheinland Taiwan Ltd., Taichung Branch Office, No. 9, Lane 36, Minsheng Rod. Sec. 3, Daya District, Taichung City 428, Taiwan.

OSHA evaluated TUVRNA's application for renewal and made a preliminary determination that TUVRNA can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing TUVRNA's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42017). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew TUVRNA's NRTL recognition.

To obtain or review copies of all public documents pertaining to the TUVRNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of TUVRNA as a NRTL. OSHA examined TUVRNA renewal application and all pertinent information related to TUVRNA's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of TUVRNA's recognition to include the terms and conditions of TUVRNA's recognition found in 60 FR 42594. The NRTL scope of recognition for TUVRNA is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/tuv.html.* This renewal extends TUVRNA's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVRNA must abide by the following conditions of recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of TUVRNA as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04545 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0048]**

## NSF International: Request for Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to NSF International as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting renewal of recognition to NSF International (NSF) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's

recognition for a period of five years, or denying the renewal of recognition.

NSF initially received OSHA recognition as a NRTL on December 10, 1998 (63 FR 68309). NSF's most recent renewal was on July 14, 2014, for a five-year period expiring on July 14, 2019. NSF submitted a timely request for renewal, dated October 11, 2018 (OSHA–2006–0048–0013), and retains their recognition pending OSHA's final decision in this renewal process. The current address of the NSF facility recognized by OSHA and included as part of the renewal request is: NSF International, 789 Dixboro Road, Ann Arbor, Michigan 48105.

OSHA published the preliminary notice announcing NSF's renewal application in the **Federal Register** on July 14, 2020 (85 FR 42435). The agency requested comments by July 29, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew NSF's NRTL recognition.

To obtain or review copies of all public documents pertaining to the NSF's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0048 contains all materials in the record concerning NSF's NRTL recognition. **Please note:** Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of NSF as a NRTL. OSHA examined NSF renewal application and all pertinent information related to NSF's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that NSF meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of NSF's recognition to include the terms and conditions of NSF's recognition found in 63 FR 68309. The NRTL scope of recognition for NSF is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/nsf.html.* This renewal extends NSF's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, NSF must abide by the following conditions of recognition:

1. NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. NSF must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. NSF must continue to meet the requirements for recognition, including all previously published conditions on NSF's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of NSF as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04547 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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# DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0042]**

## CSA Group Testing & Certification Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to CSA Group Testing & Certification Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting renewal of recognition of CSA Group Testing & Certification Inc. (CSA) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's

recognition for a period of five years, or denying the renewal of recognition.

CSA initially received OSHA recognition as a NRTL on December 24, 1992 (57 FR 61452). CSA's most recent renewal was granted on August 7, 2014, for a five-year period ending on August 7, 2019. CSA submitted a timely request for renewal, dated August 20, 2018 (OSHA–2006–0042–0016), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of CSA facilities recognized by OSHA and included as part of the renewal request are:

1. CSA Group Toronto, 178 Rexdale Boulevard, Etobicoke, Ontario, Canada M9W 1R3;
2. CSA Group Montreal, 865 Ellingham Street, Pointe-Claire, Quebec, Canada H9R 5E8;
3. CSA Group Irvine, 2805 Barranca Parkway, Irvine, California 92606;
4. CSA Group Edmonton, 1707 94th Street, Edmonton, Alberta, Canada T6N 1E6;
5. CSA Group Vancouver, 13799 Commerce Parkway, Richmond, British Columbia, Canada V6V 2N9; and
≤6. CSA Group Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131.

OSHA evaluated CSA's application for renewal and made a preliminary determination that CSA can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing CSA's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42026). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew CSA's NRTL recognition.

To obtain or review copies of all public documents pertaining to the CSA's renewal application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0042 contains all materials in the record concerning CSA's NRTL recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Notice of Final Decision

OSHA hereby gives notice of the renewal of recognition of CSA as a NRTL. OSHA examined CSA's renewal application and all pertinent information related to CSA's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of CSA's recognition to include the terms and conditions of CSA's recognition found in 57 FR 61452. The NRTL scope of recognition for CSA is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/csa.html.* This renewal extends CSA's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, CSA must abide by the following conditions of recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. CSA must meet all the terms of the NRTL recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of CSA as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04556 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0030]**

## IAPMO Ventures, LLC dba IAPMO EGS: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to IAPMO Ventures, LLC dba IAPMO EGS as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of IAPMO Ventures LLC, dba IAPMO EGS (IAPMO) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by a NRTL for renewal of

recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

IAPMO initially received OSHA recognition as a NRTL on December 22, 2014, for a five-year period expiring on December 22, 2019 (79 FR 76394). IAPMO submitted a timely request for renewal, dated March 11, 2019 (OSHA–2013–0030–0012), and retains its recognition pending OSHA's final decision in this renewal process. The current address of the IAPMO facility recognized by OSHA and included as part of the renewal request is IAPMO, 5001 East Philadelphia Street, Ontario, California 91761.

OSHA evaluated IAPMO's application for renewal and made a preliminary determination that IAPMO can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing IAPMO's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42019). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew IAPMO's NRTL recognition.

To obtain or review copies of all public documents pertaining to IAPMO's application for renewal, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2013–0030 contains all materials in the record concerning IAPMO's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of IAPMO as a NRTL. OSHA examined IAPMO's renewal application and all pertinent information related to IAPMO's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that IAPMO meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of IAPMO's recognition to include the terms and conditions of IAPMO's recognition found in 79 FR 76394. The NRTL scope of recognition for IAPMO is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/iapmo.html.* This renewal extends IAPMO's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, IAPMO must abide by the following conditions of recognition:

1. IAPMO must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. IAPMO must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. IAPMO must continue to meet the requirements for recognition, including all previously published conditions on IAPMO's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of IAPMO as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04559 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0041]**

### FM Approvals LLC: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to FM Approvals LLC as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of FM Approvals LLC (FM) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for

each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by a NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

FM initially received OSHA recognition as a NRTL on June 13, 1988, and referenced in a **Federal Register** notice dated March 29, 1995 (60 FR 16167). FM's most recent renewal was granted on July 14, 2014, for a five-year period expiring on July 14, 2019. FM submitted a timely request for renewal, dated August 3, 2018 (OSHA–2007–0041–0012), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of FM facilities recognized by OSHA and included as part of the renewal request are:

1. FM Norwood, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062; and

2. FM West Gloucester, 743 Reynolds Road, West Gloucester, Rhode Island 02814.

OSHA evaluated FM's application for renewal and made a preliminary determination that FM can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing FM's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42027). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew FM's NRTL recognition.

To obtain or review copies of all public documents pertaining to the FM's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2007–0041 contains all materials in the record concerning FM's NRTL recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of FM as a NRTL. OSHA examined FM's renewal application and all pertinent information related to FM's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that FM meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of FM's recognition to include the terms and conditions of FM's recognition found in 60 FR 16167. The NRTL scope of recognition for FM is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/fm.html.* This renewal extends FM's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, FM must abide by the following conditions of recognition:

1. FM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. FM must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. FM must continue to meet the requirements for recognition, including all previously published conditions on FM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of FM as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04555 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

## Underwriters Laboratories, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to UL LLC as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of UL LLC (UL) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR

1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

UL initially received OSHA recognition as a NRTL on June 13, 1988, referenced in a **Federal Register** notice dated June 29, 1995 (60 FR 33852). UL's most recent renewal was granted on July 14, 2014, for a five-year period ending on July 14, 2019. UL submitted a timely request for renewal, dated September 4, 2018 (OSHA–2009–0025–0028), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of the UL facilities recognized by OSHA and included as part of the renewal request are:

(1) UL Northbrook, 333 Pfingsten Road, Northbrook, Illinois 60062;

(2) UL International Netherlands B.V., Westervoortsedijk 60, Arnhem, Netherlands 6827 AT;

(3) UL International Italia S.r.l., Via Delle Industrie 1&6, Carugate, Milano, Italy 20061;

(4) UL International Services, Ltd. Taiwan, 1st Floor, 260 Da-Yeh Road, Pei Tou District AND 4th/5th Floor, No. 35, Sec 2, Zhongyang S Rd, Pei Tou, Taipei City, Taiwan 112;

(5) UL Japan, 4383–326 Asama-cho and 3600–18 Asama-cho, Ise-shi, Japan 516–0021;

(6) UL Melville, 1285 Walt Whitman Road, Mellville, New York 11747;

(7) UL International Germany GmbH, Admiral-Rosendahl-Strasse 9, 23, Neu-Isenburg 63263;

(8) UL Canada, 7 Underwriters Road, Toronto, Ontario, Canada MiR 3A9;

(9) UL Research Triangle Park, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709;

(10) UL International Denmark A/S, Borupvang 5A, Ballerup, Denmark DK–2750;

(11) UL International Limited Hong Kong, 18th Floor, Delta House, 3 On Yiu Street, Shatin, Hong Kong; and

(12) UL Korea, 26th Floor Gangnam Finance Center, 737 Yeoksam-dong Gangnam-gu, Seoul, Korea 132–984.

(13) Underwriters Laboratories International UK Ltd, Wonersh House, The Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom

OSHA evaluated UL's application for renewal and made a preliminary determination that UL can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing UL's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42010). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew UL's NRTL recognition.

To obtain or review copies of all public documents pertaining to the UL renewal application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's NRTL recognition. **Please note:** Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of UL as a NRTL. OSHA examined UL's renewal application and all pertinent information related to UL's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of UL's recognition to include the terms and conditions of UL's recognition found in 60 FR 33852. The NRTL scope of recognition for UL is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/ul.html.* This renewal extends UL's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. UL must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of UL as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04546 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2005–0022]**

### TÜV SÜD Product Services GmbH: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to TÜV SÜD Product Services GmbH as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of TÜV SÜD Product Services GmbH (TUVPSG) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

TÜV SÜD Product Services GmbH (TUVPSG) initially received OSHA recognition as a NRTL on July 20, 2001 (66 FR 38032). TUVPSG's most recent renewal was granted on January 30, 2014, for a five year period ending on January 30, 2019. TUVPSG submitted a timely request for renewal, dated April 16, 2018 (OSHA–2005–0022–0012), and retains the recognition pending OSHA's final decision in this renewal process. The current addresses of TUVPSG facilities recognized by OSHA and included as part of the renewal request are:

1. TÜV SÜD Product Services GmbH Munich, Ridlerstrasse 65 D–80339 Munich, Germany; and
2. TÜV SÜD Product Services GmbH, Daimlerstrasse 11 D–85748 Garching, Germany.

OSHA evaluated TUVPSG's application for renewal and made a preliminary determination that TUVPSG can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing TUVPSG's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42023). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew TUVPSG NRTL recognition.

To obtain or review copies of all public documents pertaining to the TUVPSG's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2005–0022 contains all materials in the record concerning TUVPSG's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

### II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of TUVPSG as a NRTL. OSHA examined TUVPSG's renewal application and all pertinent information related to TUVPSG's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that TUVPSG meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of TUVPSG's recognition to include the terms and conditions of TUVPSG's recognition found in 66 FR 38032. The NRTL scope of recognition for TUVPSG is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/tuvpsg.html.* This renewal extends TUVPSG's recognition as a NRTL for a period of five years from March 5, 2021.

#### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVPSG must abide by the following conditions of recognition:

1. TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);
2. TUVPSG must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVPSG must continue to meet the requirements for recognition, including all previously published conditions on BVCPS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of TUVPSG as a NRTL.

### III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is

issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04544 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0043]**

### TÜV SÜD America, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to TÜV SÜD America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition to TÜV SÜD America, Inc. as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

TÜV SÜD America, Inc. (TUVAM) initially received OSHA recognition as a NRTL on January 25, 2002 (65 FR 26637), for a five-year period ending on January 25, 2007. TUVAM's most recent renewal was granted on January 30, 2014, for a five year period ending on January 20, 2019. TUVAM submitted a timely request for renewal, dated April 26, 2018 (OSHA–2007–0043–0029), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of TUVAM facilities recognized by OSHA and included as part of the renewal request are:

1. TUVAM, 10 Centennial Drive, Peabody, Massachusetts 01960;
2. TÜV SÜD America, 141 14th Street NW, New Brighton, Minnesota 55112;
3. TÜV SÜD America, Inc., 10040 Mesa Rim Road, San Diego, California 92121;
4. TÜV SÜD China, Shanghai Branch 3–13, No. 151 Heng Tong Road, Shanghai
200070, P.R. China.
5. TÜV SÜD Canada, 1229 Ringwell Drive, Newmarket, Ontario, L3Y 8T8, Canada;
6. TÜV SÜD Product Services GmbH, Ridlerstrasse 65 D–80339, Munich, Germany; and
7. TÜV SÜD Product Services GmbH, Daimlerstrasse 11 D–85748, Garching, Germany.

OSHA evaluated TUVAM's application for renewal and made a preliminary determination that TUVAM can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing TUVAM's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42016). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew TUVAM NRTL recognition.

To obtain or review copies of all public documents pertaining to the TUVAM's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2007–0043 contains all materials in the record concerning TUVAM's NRTL recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of TUVAM as a NRTL. OSHA examined TUVAM's renewal application and all pertinent information related to TUVAM's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of TUVAM's recognition to include the terms and conditions of TUVAM's recognition found in 67 FR 3737. The NRTL scope of recognition for TUVAM is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/tuvam.html.* This renewal extends TUVAM's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVAM must abide by the following conditions of recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. TUVAM must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of TUVAM as a NRTL.

### III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04551 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0041]**

## Southwest Research Institute: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to Southwest Research Institute as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of Southwest Research Institute, Inc. (SWRI) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

SWRI initially received OSHA recognition as a NRTL on July 13, 1993 (58 FR 37752). SWRI's most recent renewal was granted on July 30, 2014, for a five-year period ending on July 30, 2019. SWRI submitted a timely request for renewal, dated September 14, 2018 (OSHA–2006–0041–0008), and retains their recognition pending OSHA's final decision in this renewal process. The current address of the SWRI facility recognized by OSHA and included as part of the renewal request is: Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78238.

OSHA evaluated SWRI's application for renewal and made a preliminary determination that SWRI can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing SWRI's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42015). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew SWRI NRTL recognition.

To obtain or review copies of all public documents pertaining to the SWRI application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0041 contains all materials in the record concerning SWRI's NRTL recognition. **Please note:** Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

### II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of SWRI as a NRTL. OSHA examined SWRI's renewal application and all pertinent information related to SWRI's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that SWRI meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of SWRI's recognition to include the terms and conditions of SWRI's recognition found in 58 FR 37752. The NRTL scope of recognition for SWRI is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/swri.html.* This renewal extends SWRI's recognition as a NRTL for a period of five years from March 5, 2021.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, SWRI must abide by the following conditions of recognition:

1. SWRI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);
2. SWRI must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and
3. SWRI must continue to meet the requirements for recognition, including all previously published conditions on SWRI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of SWRI as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04550 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0028]**

### MET Laboratories, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to MET Laboratories, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

OSHA hereby gives notice that it is granting the renewal of recognition of MET Laboratories, Inc. (MET) as a NRTL under 29 CFR 1910.7

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

MET initially received OSHA recognition as a NRTL on May 16, 1989 (54 FR 21136). MET's most recent renewal was granted on July 14, 2014, for a five-year period ending on July 14, 2019. MET submitted a timely request for renewal, dated September 5, 2018 (OSHA–2006–0028–0058), and retains its recognition pending OSHA's final decision in this renewal process. The current address of the MET facility recognized by OSHA and included as part of the renewal request is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

OSHA evaluated MET's application for renewal and made a preliminary determination that MET can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing MET's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42012). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew MET's NRTL recognition.

To obtain or review copies of all public documents pertaining to the MET application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's NRTL recognition. **Please note:** Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of MET as a NRTL. OSHA examined MET's renewal application and all pertinent information related to MET's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of MET's recognition to include the terms and conditions of MET's recognition found in 54 FR 21136. The NRTL scope of recognition for MET is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/met.html.* This renewal extends MET's recognition

as a NRTL for a period of five years from March 5, 2021.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. MET must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of MET as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04557 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0017]**

## QAI Laboratories Ltd.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to QAI Laboratories Ltd. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of QAI Laboratories, Ltd. (QAI) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

QAI initially received OSHA recognition as a NRTL on December 19, 2014 (79 FR 75841) for a five-year period expiring on December 19, 2019. QAI submitted a timely request for renewal, dated March 13, 2019 (OSHA–2013–0017–0011), and retains their recognition pending OSHA's final decision in this renewal process. The current addresses of the QAI facilities recognized by OSHA and included as part of the renewal request are:

1. QAI Laboratories Ltd, Coquitlam, 3980 North Fraser Way, Burnaby, British Columbia, Canada V5J 5k5; and

2. QAI Laboratories Ltd, Los Angeles, 8385 White Oak Avenue, Rancho Cucamonga, California, 91730.

OSHA evaluated QAI's application for renewal and made a preliminary determination that QAI can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing QAI's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42013). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew QAI's NRTL recognition.

To obtain or review copies of all public documents pertaining to the QAI renewal application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2013–0017 contains all materials in the record concerning QAI's NRTL recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of QAI as a NRTL. OSHA examined QAI renewal application and all pertinent information related to QAI's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that QAI meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions.

OSHA limits the renewal of QAI's recognition to include the terms and conditions of QAI's recognition found in 79 FR 75841. The NRTL scope of recognition for QAI is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/qai.html.* This renewal extends QAI's recognition as a NRTL for a period of five years from March 5, 2021.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, QAI must abide by the following conditions of recognition:

1. QAI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);
2. QAI must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and
3. QAI must continue to meet the requirements for recognition, including all previously published conditions on QAI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of QAI as a NRTL.

## III. Authority and Signature

Amanda L Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04548 Filed 3–4–21; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0026]**

### Bureau Veritas Consumer Products Services, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to Bureau Veritas Consumer Products Services, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice that it is granting the renewal of recognition of Bureau Veritas Consumer Products Services (BVCPS) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

BVCPS initially received OSHA recognition as a NRTL on May 8, 2000 (65 FR 26637), for a five-year period ending on January 25, 2007. Renewal of this recognition was granted on April 22, 2014, for a five year period ending on April 22, 2019. BVCPS submitted a timely request for renewal, dated May 25, 2018 (OSHA–2009–0026–0082), and retains their recognition pending OSHA's final decision in this renewal process. The current address of the BVCPS facility recognized by OSHA and included as part of the renewal request is Bureau Veritas Consumer Products Services, Inc., Littleton Distribution Center, One Distribution Center Circle, Suite #1, Littleton, Massachusetts 01460.

OSHA evaluated BVCPS's application for renewal and made a preliminary determination that BVCPS can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition.

OSHA published the preliminary notice announcing BVCPS's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42022). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew BVCPS NRTL recognition.

To obtain or review copies of all public documents pertaining to the BVCPS's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2009–0026 contains all materials in the record concerning BVCPS's NRTL recognition. **Please note:** Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of BVCPS as a NRTL. OSHA examined BVCPS's renewal application and all pertinent information related to BVCPS's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that BVCPS meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of BVCPS's recognition to include the terms and conditions of BVCPS's recognition found in 65 FR 26637. The NRTL scope of recognition for BVCPS is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/csl.html.* This renewal extends BVCPS's recognition as a NRTL for a period of five years from March 5, 2021.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, BVCPS must abide by the following conditions of recognition:

1. BVCPS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. BVCPS must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. BVCPS must continue to meet the requirements for recognition, including all previously published conditions on BVCPS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of BVCPS as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04558 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0039]**

### Intertek Testing Services NA, Inc.: Grant of Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to grant renewal of recognition to Intertek Testing Services NA, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The renewal of recognition becomes effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

OSHA hereby gives notice that it is granting the renewal of recognition to Intertek Testing Services NA, Inc. (ITSNA) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details its scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications submitted by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. A II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA between nine months and one year before the expiration date of the current recognition. A renewal request includes a request for renewal and any additional information demonstrating their continued compliance with the terms of the recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 to 24 months, it will schedule the necessary on-site assessment prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

ITSNA initially received OSHA recognition as a NRTL on September 13, 1989 (54 FR 37845). ITSNA's most recent renewal was granted on July 14, 2014, for a five-year period, expiring on July 14, 2019. ITSNA submitted a timely request for renewal, dated September 13, 2018 (OSHA–2007–0039–0032), and retains its recognition pending OSHA's final decision in this renewal process. The current addresses of ITSNA facilities recognized by OSHA and included as part of the renewal request are:

1. ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045;

2. ITSNA Atlanta, 1950 Evergreen Boulevard, Duluth, Georgia 30096;

3. ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719;

4. ITSNA San Francisco, 1365 Adams Court, Menlo Park, California 94025;

5. ITSNA Los Angeles, 25791 Commercentre Drive, Lake Forest, California 92630;

6. ITSNA Minneapolis, 7250 Hudson Boulevard, Suite 100, Oakdale, Minnesota 55128;

7. ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562;

8. ITSNA SEMKO, Box 1103, S–164 #22, Kista, Stockholm, Sweden;

9. ITSNA Chicago, 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005;

10. ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong;

11. ITSNA Vancouver, 1500 Brigantine Drive, Coquitlam, British Columbia, Canada V3K 7C1;

12. ITSNA Fairfield, 41 Plymouth Street, Fairfield, New Jersey 07004; and

13. ITSNA Dallas, 1809 10th Street, Suite 400, Plano, Texas 75074.

OSHA evaluated ITSNA's application and made a preliminary determination that ITSNA can continue to meet the requirements prescribed by 29 CFR 1910.7 for NRTL recognition.

OSHA published the preliminary notice announcing ITSNA's renewal application in the **Federal Register** on July 13, 2020 (85 FR 42020). The agency requested comments by July 28, 2020, and received no comments in response to this notice. OSHA is now proceeding with this final notice to renew ITSNA's NRTL recognition.

To obtain or review copies of all public documents pertaining to ITSNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone (202) 693–2350. Docket No. OSHA–2007–0039 contains all materials in the record concerning ITSNA's NRTL recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

## II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of ITSNA as a NRTL. OSHA examined ITSNA renewal application and all pertinent information related to ITSNA's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specified limitation and conditions. OSHA limits the renewal of ITSNA's recognition to include the terms and conditions of ITSNA's recognition found in 54 FR 37845. The NRTL scope of recognition for ITSNA is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/its.html.* This renewal extends ITSNA's recognition as a NRTL for a period of five years from March 5, 2021.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, ITSNA must abide by the following conditions of recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of ITSNA as a NRTL.

## III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on March 1, 2021.

**Amanda L. Edens,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–04560 Filed 3–4–21; 8:45 am]

BILLING CODE 4510–26–P

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# NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2021–021]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to collect information from people requesting researcher access to archival records. We invite you to comment on this proposed information collection.

**DATES:** OMB must receive written comments on or before April 5, 2021.

**ADDRESSES:** Send any comments and recommendations on the proposed information collection in writing to *www.reginfo.gov/public/do/PRAMain.* You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gob* or by telephone at 301.837.1694 with any requests for additional information.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on December 22, 2020 (85 FR 83624) and we received no comments. We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

*Title:* Researcher Application.

*OMB number:* 3095–0016.

Agency form number: NA Form 14003.

*Type of review:* Regular.

*Affected public:* Individuals or households, business or other for-profit, not-for-profit institutions, Federal, state, local or tribal government.

*Estimated number of respondents:* 17,500.

*Estimated time per response:* 8 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 2,333 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1254.8. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

**Swarnali Haldar,**

*Executive for Information Services/CIO.*

[FR Doc. 2021–04600 Filed 3–4–21; 8:45 am]

BILLING CODE 7515–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2020–0072]**

## Design Review Guide for Instrumentation and Controls for Non-Light-Water Reactor Reviews

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Staff guidance; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a Design Review Guide (DRG) entitled ''Instrumentation and Controls for Non-Light-Water Reactor (non-LWR) Reviews.'' This DRG provides guidance for the NRC staff to use in reviewing the Instrumentation and Controls (I&C) portions of applications for advanced non-LWRs within the bounds of existing regulations. The guidance supports NRC's Non-LWR Vision and Strategy, Implementation Action Plan Strategy 3, which involves developing: (1) Guidance for flexible regulatory review processes for non-LWRs within the bounds of existing regulations; and (2) a new non-LWR regulatory framework that is risk-informed and performance-based, and that features NRC staff's review efforts commensurate with the demonstrated safety performance of non-LWR technologies.

**DATES:** This guidance is available on March 5, 2021.

**ADDRESSES:** Please refer to Docket ID NRC–2020–0072 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0072. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin 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.* The Design Review Guide (DRG): Instrumentation and Controls for Non-Light-Water Reactor (non-LWR) Reviews is available in ADAMS under Accession No. ML21011A140.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jordan Hoellman, Office of Nuclear Reactor Regulation, telephone: 301–415–5481, email: *Jordan.Hoellman2@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The DRG guidance leverages the Small Modular Reactor Design-Specific Review Standard Chapter 7 framework while factoring in the lessons learned from new reactor reviews. This guidance supports the NRC's Vision and Strategy document entitled ''Safely Achieving Effective and Efficient Non-Light Water Reactor Mission Readiness'' (ADAMS Accession No. ML16356A670), and the ''Non-LWR Vision and Strategy Near-Term Implementation Action Plans'' (ADAMS Accession No. ML17165A069). Specifically, the guidance discussed herein supports Implementation Action Plan Strategy 3, which involves developing: (1) Guidance for flexible regulatory review processes for non-LWRs within the bounds of existing regulations; and (2) a new non-LWR regulatory framework that is risk-informed and performance-based, and that features NRC staff's review efforts commensurate with the demonstrated safety performance of non-LWR technologies. This DRG also factors in the principles in Regulatory Guide (RG) 1.233, ''Guidance for Technology-Inclusive, Risk-Informed, and Performance-Based Approach to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors'' (ADAMS Accession No. ML20091L698). RG 1.233 endorses the methodology in Nuclear Energy Institute 18–04, ''Risk-Informed Performance-Based Technology Inclusive Guidance for Non-Light Water Reactor Licensing Basis Development'' (ADAMS Accession No. ML19241A472), with clarifications and points of emphasis.

This DRG provides guidance for the NRC staff responsible for the review of the I&C portion of license applications to help determine whether: (1) The applicant has demonstrated that there is reasonable assurance that the plant is designed to adequately protect public health and safety and the environment; and (2) the design complies with the applicable regulatory requirements. Some advanced reactor reviews will use a core review team approach and the I&C topics will be addressed as part of the staff's collaborations on the overall plant design and associated programmatic controls. This DRG supports the I&C-related reviews as part of a core review team approach or a more traditional matrix-type review of applications.

The NRC staff guidance discussed herein is a proactive way to further modernize the I&C safety review of advanced non-LWR applications by making it technology-inclusive, risk-informed, and performance-based.

On April 14, 2020 (85 FR 20725), the NRC published for public comment a proposed version of the DRG. The public comment period closed on June 29, 2020. Four sets of public comments were received regarding the draft DRG. The final version of the DRG is available in ADAMS under Accession No. ML21011A140. A summary of the public comments and the NRC staff's disposition of the comments is available in a separate document (ADAMS Package Accession No. ML20238B943).

### II. Backfitting, Forward Fitting, and Issue Finality

The DRG provides guidance to the staff for reviewing instrumentation and controls information provided in applications for licensing actions involving non-LWR designs.

Issuance of the DRG does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), (the backfit rule), and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' The NRC's position is based upon the following considerations:

First, the DRG provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. New guidance intended for use by only the staff is not a matter that constitutes backfitting as that term is defined in 10 CFR 50.109(a)(1); constitutes forward fitting as that term is defined and described in

MD 8.4; or affects issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.''

Second, the NRC staff does not intend to use the guidance in the DRG to support NRC staff actions in a manner that would constitute backfitting or forward fitting. If, in the future, the NRC seeks to impose a position in the DRG in a manner that constitutes backfitting or forward fitting or affects the issue finality for a 10 CFR part 52 approval, then the NRC will address the backfitting provision in 10 CFR 50.109, the forward fitting provision of MD 8.4, or the applicable issue finality provision in 10 CFR part 52, respectively.

### III. Congressional Review Act

This DRG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: March 2, 2021.

For the Nuclear Regulatory Commission.

**Mohamed K. Shams,**

*Division Director, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021–04640 Filed 3–4–21; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–331; NRC–2020–0148]**

## NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Post-Shutdown Decommissioning Activities Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Reopening of comment period.

**SUMMARY:** On June 19, 2020, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on the post-shutdown decommissioning activities report (PSDAR) for the Duane Arnold Energy Center (DAEC). The PSDAR, which includes the site-specific decommissioning cost estimate (DCE), provides an overview of NextEra Energy Duane Arnold, LLC's (NEDA or the licensee's) planned decommissioning activities, schedule, projected costs, and environmental impacts for DAEC. The public comment period closed on October 19, 2020, was reopened on October 26, 2020, and closed again on February 19, 2021. The NRC has decided to reopen the public comment period for a second time to provide additional time for members of the public to develop and submit their comments, as well as to allow time for an in-person public meeting on the PSDAR. The NRC will hold a public meeting to discuss the PSDAR's content and receive comments once restrictions associated with the Coronavirus Disease 2019 public health emergency are lifted.

**DATES:** The comment period for the document published on June 19, 2020 (85 FR 37116) has been reopened. Comments should be filed no later than August 19, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0148. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Marlayna V. Doell, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3178; email: *Marlayna.Doell@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

#### *A. Obtaining Information*

Please refer to Docket ID NRC–2020–0148 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0148.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

#### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC- 2020–0148 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Discussion

On June 19, 2020, the NRC solicited comments on the PSDAR dated April 2, 2020, including the site-specific DCE for DAEC (ADAMS Accession No. ML20094F603). The purpose of the original **Federal Register** notice (85 FR

37116; June 19, 2020) was to inform the public of a meeting to discuss and accept comments on the PSDAR and DCE. The public comment period closed on October 19, 2020, was reopened on October 26, 2020 (85 FR 67780), to account for the restrictions associated with the Coronavirus Disease 2019 public health emergency and closed again on February 19, 2021.

The NRC has decided to once again reopen the public comment period on this document until August 19, 2021, to provide additional time for members of the public to develop and submit their comments, as well as to allow time for an in-person public meeting on the DAEC PSDAR. The NRC will hold a public meeting to discuss the PSDAR's content and receive comments once restrictions associated with the Coronavirus Disease 2019 public health emergency are lifted. Members of the public interested in attending this meeting should monitor the NRC's Public Meeting Schedule website at *https://www.nrc.gov/pmns/mtg* for additional information.

Dated: March 2, 2021.

For the Nuclear Regulatory Commission.

**Bruce Watson,**

*Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–04631 Filed 3–4–21; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91227; File No. SR–NYSE–2020–95]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and Make Related Changes to Rules 7.32, 7.35C, 46B, and 47

March 1, 2021.

### I. Introduction

On November 13, 2020, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and to make related changes to Rules 7.32 (Order Entry), 7.35C (Exchange-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials—Unusual Situations). The proposed rule change was published for comment in the **Federal Register** on December 1, 2020.[3]

On January 13, 2020, the Commission extended to March 1, 2021, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.[4] The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

### II. Description of the Proposal

*Proposed Changes to Parameters for DMM-Facilitated Electronic Auctions*

The Exchange proposes to make permanent the parameters for DMM-facilitated electronic auctions that are currently in effect on a temporary basis during the Covid-19 pandemic, as set forth in Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B.[5]

Current Rules 7.35A(c)(1)(G) and (H) provide that a DMM may not effect a Core Open or Trading Halt Auction electronically if (i) the Auction Price will be more than 4% away from the Consolidated Last Sale Price,[6] or (ii) the paired volume for the Auction will be more than 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter, or 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter. Rule 7.35A(c)(2) further provides that if, as of 9:00 a.m., the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening or reopening electronically if the Auction Price will be up to 8% away from Consolidated Last Sale Price, without any volume limitations.[7]

Current Rule 7.35B(c)(1)(G) and (H) provide that a DMM may not effect a Closing Auction electronically if (i) the Auction Price will be more than a designated percentage away from the Exchange Last Sale Price, or (ii) the paired volume for the Closing Auction will be more than 1,000 round lots for such security.[8]

The Exchange proposes to make the price percentage parameter 10% and eliminate the volume restrictions for all DMM-facilitated Auctions. These parameters are currently in effect on a temporary basis pursuant to Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B.[9]

*Proposed Changes to Applicable Price Range for Pre-Opening Indications*

The Exchange proposes to make permanent that the Applicable Price Range for determining whether to publish a pre-opening indication would be 10% for securities with an Indication Reference Price higher than $3.00 and $0.30 for securities with an Indication Reference Price equal to or lower than $3.00, which are currently in effect on a temporary basis during the Covid-19 pandemic, as set forth in Commentary .06 to Rule 7.35A.[10]

Rule 7.35A(d)(1)(A) currently provides that a DMM will publish a pre-opening indication before a security opens or reopens if the Core Open or Trading Halt Auction is anticipated to be a change of more than the ''Applicable Price Range,'' as specified in Rule 7.35A(d)(3), from a specified ''Indication Reference Price,'' as specified in Rule 7.35A(d)(2).[11]

Rule 7.35A(d)(3)(A) provides that the Applicable Price Range will be 5% for securities with an Indication Reference Price over $3.00 and $0.15 for securities with an Indication Reference Price equal to or lower than $3.00. Rule 7.35A(d)(3)(B) further provides that, if as of 9:00 a.m., the E-mini S&P 500 Futures are +/−2% from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 7.12, or if the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 90495 (Nov. 24, 2020), 85 FR 77304 (Dec. 1, 2020) (SR–NYSE–2020–95) (''Notice'').

[4] *See* Securities Exchange Act Release No. 90917 (Jan. 13, 2021), 86 FR 6403 (Jan. 21, 2020).

[5] *See* Notice, *supra* note 3, at 77305.

[6] The term ''Consolidated Last Sale Price'' is defined in Rule 7.35 to mean the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

[7] *See* Notice, *supra* note 3, at 77305.

[8] *See id.*

[9] *See* Notice, *supra* note 3, at 77305–77306.

[10] *See* Notice, *supra* note 3, at 77307.

[11] *See id.*

determines that it is necessary or appropriate for the maintenance of a fair and order market, the Applicable Price Range for determining whether to publish a pre-opening indication will be 10% for securities with an Indication Reference Price over $3.00 and $0.30 for securities with an Indication Reference Price equal to or lower than $3.00.[12]

Current Rule 7.35A(1)(A) further provides that a DMM may not effect a Core Open or Trading Halt Auction electronically if a pre-opening indication has been published for the Core Open Auction. The Exchange notes that if a DMM chooses to facilitate a Core Open Auction or Trading Halt Auction manually (*i.e.,* if there is less than a 10% price movement), a DMM could still choose to publish a pre-opening indication in connection with such Auction, even if the Applicable Price Range has not been triggered.[13]

*Proposed Changes to Floor Broker Interest for the Closing Auction*

The Exchange proposes to make permanent that Floor Broker Interest would not be eligible to participate in the Closing Auction, as set forth in Commentary .03 to Rule 7.35B. The term ''Floor Broker Interest'' is defined in Rule 7.35(a)(9) to mean orders represented orally by a Floor broker at the point of sale.[14]

Rule 7.35B(a)(1) currently provides that Floor Broker Interest is eligible to participate in the Closing Auction provided that the Floor broker has electronically entered such interest before the Auction Processing Period for the Closing Auction begins. The Rule further provides that for such interest to be eligible to participate in the Closing Auction, a Floor broker must first, by the end of, but not after, Core Trading Hours, orally represent Floor Broker Interest at the point of sale, including symbol, side, size, and limit price, and then second, electronically enter such interest after the end of Core Trading Hours. Current Rules 7.35B(a)(1)(B) and (C) set forth additional requirements relating to electronic acceptance of such interest by the DMM and circumstances when such interest can be cancelled.[15]

To effect this change, the Exchange proposes to amend Rule 7.35B(a)(1) to provide that Floor Broker Interest would not be eligible to participate in the Closing Auction. The Exchange further proposes to provide that Floor brokers must enter any orders for the Closing Auction, as defined in Rule 7.31, electronically during Core Trading Hours. The Exchange states that the cross-reference to Rule 7.31 in the Rule would provide notice to Floor brokers and their customers of which order types are available for electronic entry by Floor brokers for the Closing Auction, which include both Auction-Only Orders described in Rule 7.31(c) and other orders that may be resting on the Exchange Book that are eligible to participate in the Closing Auction. The Exchange also proposes to delete Commentary .03 to Rule 7.35B.[16]

The Exchange proposes to make related changes by deleting the clause ''and Floor Broker Interest intended for the Closing Auction as defined in Rule 7.35B(a)(1)'' from Rule 7.32. Similarly, the Exchange proposes to delete the text set forth in Rule 7.35C(a)(2) relating to Floor Broker Interest that provides that ''Floor Broker Interest that has been electronically accepted by the DMM and that has not been cancelled as provided for in Rule 7.35B(a)(1)(C) will be eligible to participate in an Exchange-facilitated Closing Auction.'' [17]

In addition, the Exchange proposes to delete Rule 46B and amend Rule 47(b). Under Rule 47, Floor Officials have the authority to ''supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.'' The Exchange recently amended its rules to add Regulatory Trading Officials (''RTO''), which are defined in Rule 46B.[18] The Exchange amended Rule 47 to add subparagraph (b), which provides that RTOs, instead of Floor Officials, would be responsible for supervising and regulating situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM.[19]

In connection with eliminating verbal bids or verbal offers for the Closing Auction, the Exchange proposes to delete the last clause of Rule 47(a) and subparagraph (b) to Rule 47.[20] According to the Exchange, as proposed, Rule 47 would revert to the rule text in effect prior to the RTO Approval Order and would provide that ''Floor Officials shall have power to supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.'' According to the Exchange, with this proposed change, RTOs would no longer have a role under Exchange rules, and it therefore proposes to delete Rule 46B.[21]

The Exchange also proposes to delete Commentary .02 to Rule 7.35B. According to the Exchange, this Commentary is obsolete because it has not been in effect since May 22, 2020.

## III. Proceedings To Determine Whether To Disapprove SR–NYSE–2020–95 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [22] to determine whether the proposal should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposal.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, Section 6(b)(5) of the Act prohibits the rules of an exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under the proposal, the Exchange seeks to amend Rules 7.35A and 7.35B to widen the price parameters to 10% for DMM-facilitated electronic Core Open, Trading Halt, and Closing Auctions. Accordingly, the Commission seeks public comment on the proposed price parameters for DMM-facilitated

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See* Notice, *supra* note 3, at 77307–77308.

[16] *See* Notice, *supra* note 3, at 77308.

[17] *See id.*

[18] *See* Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR–NYSE–2020–03) (''RTO Approval Order'').

[19] *See id.*

[20] RTOs were approved when the Trading Floor was temporarily closed. *Id.* Because Commentary .03 to Rule 7.35B was implemented when DMMs returned to the Trading Floor, there has not been any Floor Broker Interest for Closing Auctions since RTOs were created and therefore RTOs have not had to perform the functions as described in Rule 46(b).

[21] *See id.*

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 15 U.S.C. 78f(b)(5).

electronic auctions. Specifically, the Commission seeks public comment on the following topics:

1. The NYSE proposal for Trading Halt Auctions facilitated electronically by DMMs would differ from other primary listing markets' reopening processes after limit-up/limit-down (LULD) pauses and market-wide circuit breaker (MWCB) halts in that it would permit a fully automated reopening of trading at prices up to 10% away from the auction reference price immediately after a trading pauses or halts, whereas Nasdaq, NYSE Arca, and Cboe BZX establish 5% price bands for reopening and then widen those price bands in increments of 5%, with additional auction extension messages associated with each widening, until market interest can be satisfied. Should the primary listing exchanges harmonize their respective processes for reopening trading by fully automated auction after an LULD pause or a Level 1 or Level 2 MWCB halt, and if so, why? If so, which aspects of the reopening processes following LULD pauses and MWCB halts should be harmonized (*e.g.,* period of auction order entry, type of auction information disseminated, length of dissemination period, frequency of dissemination, auction reference price, determination of auction match price, width of permitted price bands, or expansions of permitted price bands) and what are the appropriate parameters? Should NYSE further harmonize its proposed Trading Halt Auction process for fully automated auctions facilitated electronically by DMMs to align with Nasdaq, NYSE Arca, and Cboe BZX regarding the establishment of permitted price bands, and/or the limit (or lack thereof) on price band adjustments?

2. Is it appropriate for the Exchange to permit a DMM to reopen a security up to 10% away from the reference price immediately after an LULD pause or MWCB halt without human intervention? Are there any specific data, statistics, or studies to support the Exchange's proposed price parameters within which a DMM can electronically facilitate a Trading Halt Auction?

3. Are there characteristics of the NYSE market structure that warrant divergence from the price parameters in place for other exchanges' fully automated reopening auctions immediately following an LULD pause or MWCB halt? For example, does the nature of DMM participation in a Trading Halt Auction, whether the DMM participates manually or electronically, justify the ability of the NYSE to conducted a fully automated reopening auction 10% away from the reference price immediately after an LULD pause or MWCB halt, rather than 5% away, as at other primary listing exchanges?

4. Should the price parameters within which DMMs are permitted to electronically facilitate auctions be the same for Core Open Auctions, Trading Halt Auctions, and Closing Auctions?

## IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [24] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[25] any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views and arguments regarding whether the proposal should be disapproved by March 26, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 9, 2021.

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–NYSE–2020–95 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSE–2020–95. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal 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 website 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 filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–95 and should be submitted on or before March 26, 2021. Rebuttal comments should be submitted by April 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–04530 Filed 3–4–21; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 15 U.S.C. 78f(b)(5).

[25] 17 CFR 240.19b–4.

[26] Rule 700(c)(2) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(2).

[27] 17 CFR 200.30–3(a)(57).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91231; File No. SR–CboeEDGX–2021–011]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposal To Permit the Exchange To Look Back Only to July 2020 To Correct Certain Billing Errors Which Were Discovered in October 2020

March 1, 2021.

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 February 18, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to permit the Exchange to look back only to July 2020 to correct certain billing errors which were discovered in October 2020. This rule change does not provide for any modifications to the text of the Exchange's rules or fees schedule.

The text of the proposal is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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

The Exchange recently amended its equities and options fees schedules to adopt a provision relating to billing errors and fee disputes.[5] Specifically, the Exchange adopted a provision that provides that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members and Non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions that occurred during those months.[6] The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or Non-Member that submitted a fee dispute to the Exchange. The Exchange's fees schedules also provide that all disputes concerning fees and rebates assessed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. The purpose of this policy is to provide both the Exchange and Members and Non-Members subject to the Exchange's fee schedule finality and the ability to close their books after a known period of time. The Exchange further notes that several other exchanges have adopted similar provisions in their rules.[7]

The Exchange proposes to apply the recently adopted billing policy to transactions impacted by billing errors that were discovered in October 2020. Particularly, in October 2020, the Exchange's affiliate, Cboe BZX Exchange, Inc. identified a billing error relating to certain fee codes. As a result of the discovery, the Exchange, along with its affiliates, conducted a review of additional fee code configurations across each Exchange, which review was only recently completed. The review resulted in the discovery of additional billing errors relating to Exchange fee codes. These errors resulted in various Members being over-rebated or under-billed, and to a lesser extent over-billed, over the course of several years. In the absence of applying the recently adopted billing policy to transactions impacted by the October 2020 billing errors, the Exchange would be required to credit or debit Members based on the fees or rebates that should have been applied to all impacted transactions, regardless of how far back the transactions occurred (which as noted above, is several years). If the Exchange were permitted to apply the current rule language to the billing errors discovered in October 2020 however, then the Exchange could limit its look back in correcting those errors to only those transactions that occurred in the three months preceding the discovery of the errors (*i.e.,* July 2020 through September 2020).[8] Moreover, the benefit to the Exchange of limiting the impact of these particular errors to three months is much smaller as compared to the benefit that Members would receive. Specifically, the nature of these particular billing errors is such that in correcting the errors, more money would be owed to the Exchange by Members due to over-rebating or under-billing than is owed to Members by the Exchange due to overbilling. Accordingly, the Exchange believes it's appropriate and equitable to apply the three-month look back for corrective billing to the errors that were discovered in October 2020.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] 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

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[6] For example, if the Exchange becomes aware of a transaction fee billing error on February 4, 2021, the Exchange will resolve the error by crediting or debiting Members based on the fees or rebates that should have been applied to any impacted transactions during November, 2020, December 2020 and January 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the February 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, February 4, 2021) and thereafter, would be billed correctly.

[7] *See e.g.* Securities Exchange Act Release No. 87650 (December 3, 2019), 84 FR 67304 (December 9, 2019) (SR–NYSECHX–2019–024); Securities Exchange Act Release No. 84430 (October 16, 2018), 83 FR 53347 (October 22, 2018) (SR–NYSENAT–2018–23); and Securities Exchange Act Release No. 79060 (October 6, 2016), 81 FR 70716 (October 13, 2016) (SR–ISEGemini–2016–11).

[8] The Exchange corrected errors in advance of issuing the October 2020 invoice and therefore, transactions impacted through the date of discovery and thereafter, were billed correctly.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting its currently policy, the Exchange noted that it believed providing that all fees are final after 3 months is reasonable as both the Exchange and Members have an interest in knowing when its fee assessments are final and when reliance can be placed on those assessments. Indeed, without some deadline on fee disputes and billing errors, the Exchange and market participants would never be able to close their books with any confidence. Furthermore, as noted above, a number of Exchanges similarly consider their fees final after a similar period of time.[12] As discussed above, in October 2020, the Exchange became aware of certain billings errors which resulted in various Members being over-rebated or under-billed, and to a lesser extent over-billed over the course of several years. The Exchange believes it's appropriate that Members that were impacted by these billing errors similarly be subject to the recently adopted billing policy to not resolve billing errors past three months from the time a billing error was discovered (in this case, not be invoiced for impacted transactions that occurred prior to July 2020).[13] The Exchange does not think it is appropriate or equitable to have to correct billing errors for transactions that occurred prior to July 2020. As discussed, the Exchange believes it's reasonable and important for both Members and the Exchange to rely on the finality of fees and rebates assessed. Moreover, the proposed rule change would apply to all Members equally, in that the Exchange would be precluded from invoicing any Member for the correct amounts that should have been applied to trades that were otherwise billed incorrectly before July 2020. The Exchange also believes the proposal would be consistent with the protection of investors and the public interest because it would allow impacted market participants to benefit from the same rule recently adopted by the Exchange. Additionally, as discussed, Members would receive a greater benefit from the application of the current billing errors policy as compared to the Exchange with respect to these particular billing errors. Furthermore, the Exchange believes the proposal to limit the time period it must correct billing errors does not raise any new or novel issues that have not been already been considered by the Commission. Particularly, the proposal to limit how far back an exchange must go to correct billing errors is comparable to other policies and practices that have long been established at other exchanges.[14]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange notes the proposal is not intended to address any competitive issue, but rather provide finality to Members with respect to billing errors that were just recently discovered and extend to them the applicability of a recently adopted billing practice that considers all fees final after three months. Further, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all Members. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects transactions that occurred on the Exchange. Additionally, other exchanges have long established policies in which fees shall be considered final after a specified period of time.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were solicited or received on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2021–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2021–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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

[11] *Id.*

[12] *See* supra note 7.

[13] Since the errors were discovered in October 2020, the three preceding months that would be corrected are July, August, and September 2020.

[14] *See* supra note 7.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

provisions of 5 U.S.C. 552, will be available for website 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–CboeEDGX–2021–011 and should be submitted on or before March 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–04531 Filed 3–4–21; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34218; 812–15174]**

## Rand Capital Corporation, et al.

March 1, 2021.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

*Summary of Application:* Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts. The Order would supersede the prior order.[1]

*Applicants:* Rand Capital Corporation (''Company''), BlueArc Mezzanine Partners I, LP (''BlueArc''), Rand Capital SBIC, Inc. (''Existing Wholly-Owned Subsidiary''), Rand Capital Management, LLC (''BDC Adviser''), Callodine Strategic Credit, LLC (''CSC Adviser''), Callodine Capital Management, LP (''Callodine Adviser,'' and, together with the BDC Adviser and the CSC Adviser, the ''Existing Advisers''), Callodine Commercial Finance, LLC (the ''Existing Callodine Proprietary Account''), Callodine Capital Master Fund, LP (''Callodine Capital Master Fund'') and Callodine Special Opportunity Fund, LP (''Callodine Special Opportunity Fund and, together with the Callodine Capital Master Fund, the ''Callodine Private Funds'').

*Filing Dates:* The application was filed on October 30, 2020, and amended on January 5, 2021.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on March 26, 2021 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: *bcollins@callodine.com* and *pgrum@randcapital.com.*

**FOR FURTHER INFORMATION CONTACT:** Marc Mehrespand, Senior Counsel, at (202) 551–8453 or Trace Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) under the Act and rule 17d-1 under the Act to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds[2] and/or one or more Affiliated Funds[3] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub (defined below) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[4]

### Applicants

2. The Company is a New York corporation and operates as a diversified closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[5] The Company is managed by a Board[6]

[1] Rand Capital Corporation, *et al.,* Investment Company Act Rel. No. 34006 (Sept. 11, 2020) (notice) and Investment Company Act Rel. No. 34046 (October 7, 2020) (order).

[2] ''Regulated Funds'' means the Company, the Future Regulated Funds and the BDC Downstream Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) are an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program''). ''Adviser'' means the Existing Advisers together with any future investment adviser that (i) controls, is controlled by or is under common control with Callodine Group, LLC (''Callodine''), (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') or (b) is an exempt reporting adviser pursuant to rule 203(m) of the Advisers Act (''Exempt Reporting Adviser'') and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[3] ''Affiliated Fund'' means the Existing Affiliated Funds, any Future Affiliated Fund or any Callodine Proprietary Account. ''Existing Affiliated Funds'' means BlueArc, the Callodine Private Funds and the Existing Callodine Proprietary Account. ''Future Affiliated Fund'' means any entity (a) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (b) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, (c) that intends to participate in the Co-Investment Program, and (d) that is not a BDC Downstream Fund. ''Callodine Proprietary Account'' means the Existing Callodine Proprietary Account and any direct or indirect, wholly- or majority-owned subsidiary of Callodine or any Adviser that, from time to time, may hold various financial assets in a principal capacity.

[4] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[5] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[6] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the

currently comprised of five persons, three of whom are Independent Directors.[7]

3. BDC Adviser, a Delaware limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Company pursuant to an investment advisory agreement.

4. CSC Adviser, a Delaware limited liability company, is an Exempt Reporting Adviser and serves as investment adviser to BlueArc.

5. BlueArc is a Georgia limited partnership.

6. The Existing Wholly-Owned Subsidiary is a New York corporation.

7. The Callodine Adviser is a Massachusetts limited partnership and is registered as an investment adviser under the Advisers Act. It serves as investment adviser to each of the Callodine Private Funds.

8. Callodine Capital Master Fund is a Cayman Islands limited partnership and Callodine Special Opportunity Fund is a Delaware limited partnership.

9. The Existing Callodine Proprietary Account is a Delaware limited liability company that is an indirect majority-owned subsidiary of Callodine.

10. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

## Applicants' Representations

### A *Allocation Process*

11. Applicants represent that the Existing Advisers have established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

12. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Adviser considering the opportunity for its clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies[9] and any Board-Established Criteria[10] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

13. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

14. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, such Adviser's investment committee will approve an investment amount to be allocated to each Regulated Fund and/or Affiliated Fund participating in the Potential Co-Investment Transaction. Applicants state further that, each proposed order amount may be reviewed and adjusted, in accordance with the applicable Adviser's written allocation policies and procedures, by the applicable Adviser's investment committee.[11] The order of a

board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[7] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary (defined below), maintains a license under the SBA Act (defined below) and issues debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) (A) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a real estate investment trust within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended (''Code'') because substantially all of its assets would consist of real properties. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company. The Existing Wholly-Owned Subsidiary is a Wholly-Owned Investment Sub.

[9] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

15. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

*B. Follow-On Investments*

16. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

17. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

18. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

*C. Dispositions*

19. Applicants propose that Dispositions[19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

[12] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

[14] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) in transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms

20. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [21] or (ii) the securities are Tradable Securities [22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

*D. Delayed Settlement*

21. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

*E. Holders*

22. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition.

**Applicants' Legal Analysis**

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because all of the Regulated Funds and Affiliated Funds, including the Callodine Proprietary Accounts, are directly or indirectly controlled by Callodine. This is because (i) CSC Adviser manages and may be deemed to control BlueArc, (ii) Callodine Adviser manages and may be deemed to control the Callodine Private Funds, (iii) an Adviser will manage and may be deemed to control any Future Affiliated Fund; (iv) BDC Adviser manages and may be deemed to control the Company pursuant to the an investment advisory agreement; (v) any future Regulated Fund will be managed by and may be deemed to be controlled by an Adviser; (vi) each BDC Downstream Fund [23] will be, deemed to be controlled by its BDC parent and/or its BDC parent's investment adviser; and (vii) the Advisers, including the Existing Advisers, will be directly or indirectly controlled by Callodine. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds that are BDCs, including the Company and any BDC Downstream Fund, in a manner described by section 57(b) and related to Future Regulated Funds that are registered investment companies in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other.

4. Further, because the Wholly-Owned Investment Subs are controlled by the Regulated Funds, the Wholly-Owned Investment Subs are subject to Section 57(a)(4) (or Section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act), and thus also subject to the provisions of Rule 17d–1, and therefore would be prohibited from participating in Co-Investment Transactions.

of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) it trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

[23] ''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program.

5. In addition, because the Callodine Proprietary Accounts, including the Existing Callodine Proprietary Account, are directly or indirectly controlled by Callodine, and, therefore, may be under common control with the Company, the Advisers, and any Future Regulated Funds, the Callodine Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program.

6. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

7. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

**Applicants' Conditions**

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a). The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b). When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a). If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b). If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c). After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii). the transaction is consistent with:

(A). The interests of the Regulated Fund's equity holders; and

(B). the Regulated Fund's then-current Objectives and Strategies;

(iii). the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A). The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) the date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B). any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with

the amount of each such party's investment; and

(iv). the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [24] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17 (e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[25] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[26]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i). The Adviser to such Regulated Fund or Affiliated Fund [27] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b). *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c). *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i). (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [28] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii). each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i). The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii). the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c). *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

[24] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[25] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[26] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D). ''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[27] Any Callodine Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[28] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

(i). *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [29] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i). the Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b). *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[30] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii). it is a Non-Negotiated Follow-On Investment.

(c). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a

[29] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[30] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c). *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). the amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a). Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b). All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c). Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d). The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of each Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[31] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or

[31] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91226; File No. SR–BX–2021–003]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Options Rules

March 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2, Section 10 (Directed Market Makers); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); and Options 3, Section 15 (Risk Protections).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Options 2, Section 10 (Directed Market Makers); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); and Options 3, Section 15 (Risk Protections). Each change will be described below.

Options 2, Section 10

Options 2, Section 10(a), which concerns Directed Market Makers, currently provides, ''Market Makers may receive Directed Orders [3] in their appointed classes in accordance with the provisions of this Rule, Directed Market Makers provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders.'' The Exchange proposes to amend this sentence to remove the unnecessary phrase ''Directed Market Makers'' so that the sentence provides, ''Market Makers may receive Directed Orders in their appointed classes in accordance with the provisions of this Rule, provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders.'' The words ''Directed Market Makers'' are not necessary and add confusion to the sentence.

Options 3, Section 7

The Exchange proposes to amend Options 3, Section 7(a)(4), which describes a Minimum Quantity Order, to amend the word ''require'' by making it plural. This grammatical amendment is technical and non-substantive.

The Exchange proposes to amend Options 3, Section 7(a)(4) to describe a Contingency Order. Today, BX has two order types which have contingencies: (1) Minimum Quantity Orders [4] and (2) All-or-None Orders.[5] The Exchange

[3] Pursuant to Options 3, Section 7(a)(2), a ''Directed Order'' is an order to buy or sell which has been directed, provided it is properly marked as such, to a particular Market Maker (''Directed Market Maker'').

[4] ''Minimum Quantity Order'' is an order that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected. *See* Options 3, Section 7(a)(4).

[5] ''All-or-None Order'' is a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening or after market close will be rejected. *See* Options 3, Section 7(a)(7).

proposes to formalize the definition of a ''Contingency Order'' within proposed new Options 3, Section 7(a)(4)(A) to mean Minimum Quantity Orders and All-or-None Orders to bring greater clarity to its rules. The Exchange proposes to state within proposed new Options 3, Section 7(a)(4)(A) that Contingency Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously, which is true of Minimum Quantity Orders and All-or-None Orders today. Today, Minimum Quantity Orders and All-or-None Orders both have a time-in-force designation of Immediate or Cancel and both have a size requirement. A Minimum Quantity Order requires that a specified minimum quantity of contracts be obtained, or the order is cancelled. Similarly, an All-or-None Order is to be executed in its entirety at the specified size or the order will be cancelled. The Contingency Orders execute against multiple, aggregated orders only if the executions would occur simultaneously to ensure that Minimum Quantity Orders and All-or-None Orders are executed at the specified size while also honoring the priority of all other orders on the Order Book. The Exchange is adopting rule text which is similar, in relevant part, to a provision in the definition of Minimum Quantity Order on Cboe Exchange, Inc. (''Cboe''). Cboe Rule 5.6(b) provides, ''. . . Minimum Quantity. A ''Minimum Quantity'' order is an order that requires a specified minimum quantity of contracts to be executed or is cancelled. Minimum Quantity orders will only execute against multiple, aggregated orders if the executions would occur simultaneously. Only a Book Only order with a Time-in-Force designation of IOC may have a Minimum Quantity instruction (the System disregards a Minimum Quantity instruction on any other order). Users may not designate bulk messages as Minimum Quantity Orders.'' Similar to BX's Minimum Quantity Orders and All-or-None Orders, Cboe's Minimum Quantity Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously because of the size contingency.

This amendment will clarify the current rule to more specifically describe the manner in which the System currently handles Contingency Orders on BX. The Exchange notes that the handling of such orders as described by the proposed rule text within Options 3, Section 7(a)(4)(A) is consistent with the Exchange's allocation methodology within Options 3, Section 10 and description of order types within Options 3, Section 7. The additional clarity makes clear that because of the size requirements of Minimum Quantity Orders and All-or-None Orders, that those orders must be satisfied simultaneously to avoid any priority conflict on the Order Book which considers current displayed NBBO prices to avoid locked and crossed markets as well as trade-throughs.

The Exchange proposes to replace references to the term ''Limit Order Price Protection'' within Options 3, Section 7 with the correct term, ''Order Price Protection.'' The Exchange inadvertently referred to a ''Limit Order Price Protection'' within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B). The correct name of the risk protection is the ''Order Price Protection'' as described within Options 3, Section 15(a)(1).[6] At this time the Exchange proposes to amend this term to reflect the correct name of the risk protection.

Finally, the Exchange proposes to renumber the rule from current Options 3, Section 7(a)(9) through (12) to amend the numbering which today does not have an Options 3, Section 7(a)(8).

Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10, Order Book Allocation, to conform this rule, in relevant part, to Phlx Options 3, Section 10 as discussed below. In 2019, Phlx revised its allocation rule,[7] which was previously located at Phlx Rule 1089 and has since been relocated to Options 3, Section 10,[8] to conform the location of Phlx's allocation rule to the location of BX's allocation rule. In addition to conforming the structure and certain content of the Phlx rule to BX's rule in the Prior Allocation Rule Change, Phlx made some additional modifications to its rule. At this time, the Exchange proposes to conform certain rule text within BX's allocation rule to Phlx's allocation rule. The Phlx rule text was added within the Prior Allocation Rule Change in order to add specificity to Phlx's allocation rule.

Currently BX Options 3, Section 10(a)(1)(C)(1)(b), which provides for Lead Market Maker allocation, states:

> Lead Market Maker (''LMM'') Priority: An LMM may be assigned by the Exchange in each option class in accordance with Options 2, Section 3. LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:

The Exchange proposes to amend this rule text, similar to Phlx,[9] to insert the term ''quote''[10] in place of the terms ''bid''[11] and ''offer''[12] in the third sentence. The term ''quote'' and the term ''bid/offer'' are, where changes are proposed herein, interchangeable terms that are intended to differentiate ''quotes'' or ''bid/offer'' from an ''order.''[13] Of note, only BX Market Makers may enter a ''quote'' or a ''bid/offer.'' The Exchange's proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

Further, the Exchange proposes to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace ''Exchange's disseminated price'' with ''better of the NBBO or internal BBO.'' BX Options 3, Section 4, Entry and Display of Quotes, provides, at subparagraph (b)(6), ''. . . A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.'' As further explained within a prior BX rule change,[14]

[6] Options 3, Section 15(a)(1) provides in part, ''Order Price Protection (''OPP''). OPP is a feature of the System that prevents certain day limit, good til cancelled, and immediate or cancel orders at prices outside of pre-set standard limits from being accepted by the System. OPP applies to all options but does not apply to market orders . . .''

[7] *See* Securities Exchange Act Release No. 86191 (June 28, 2019), 84 FR 31131 (June 24, 2019) (SR–Phlx–2019–20) (Order Granting Approval of Proposed Rule Change Relating to the Allocation and Prioritization of Automatically Executed Trades) (''Prior Allocation Rule Change'').

[8] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[9] *See* Phlx Options 3, Section 10(a)(1)(B).

[10] *See* BX Options 1, Section 1(a)(53). The term ''quote'' or ''quotation'' mean a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

[11] *See* BX Options 1, Section 1(a)(7). The term ''bid'' means a limit order to buy one or more options contracts.

[12] *See* BX Options 1, Section 1(a)(34). The term ''offer'' means a limit order to sell one or more options contracts.

[13] *See* BX Options 1, Section 1(a)(44). The term ''order'' means a firm commitment to buy or sell options contracts as defined in Section 7 of Options 3.

[14] *See* Securities Exchange Act Release No. 89476 (August 10, 2020), 85 FR 48274 (August 4, 2020)

Continued

Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on BX by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will allow BX to define an ''internal BBO'' within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices, which are resting on the Order Book.[15]

BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange's proposal to use the term ''better of the NBBO or the internal BBO'' in BX Options 3, Section 10(a)(1)(C)(1)(b) seeks to better articulate current behavior and more closely conform with the concept of re-pricing at an internal BBO described within BX Options 3, Section 4, Entry and Display of Quotes. While this concept of ''better of the NBBO or the internal BBO'' is currently described in other portions of the BX Rulebook today, the Exchange believes adding context within the allocation rule to the re-priced quotes which remain on BX's Order Book and are accessible at the non-displayed price, will make clear within Options 3, Section 10 that, as is the case today, if the LMM's quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation.[16] While the proposed rule text offers a more precise description, the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange's disseminated price. The proposed language also considers a re-priced quote, which may be at a better price on the Order Book but is non-displayed. Today, the re-pricing of quotes permits BX to comply with trade-through rules and prevent locked and crossed markets. This System behavior is not new, rather it is being described in greater detail herein as in other parts of the Rulebook. The proposed change within Options 3, Section 10(a)(1)(C)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within BX Options 3, Section 10(a)(1)(C)(2)(ii)(1) which describes Size Pro-Rata Execution Algorithm.

The Exchange also proposes to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) which currently provides,

> Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

The Exchange proposes to instead provide,[17]

> Notwithstanding the foregoing, when a Directed Order is received and the DMM's quote is at or improves on the better of the NBBO or internal BBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

While today, the DMM's quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,[18] the re-pricing of orders would permit a DMM's quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1). As explained above in greater detail, orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. While the re-priced order is displayed on OPRA that order is accessible on BX's Order Book at the non-displayed price. The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as ''(iv)'' to account for new rule text proposed herein. The changes described in this paragraph are not System or functionality changes but provide greater clarity as to the way the System functions.

Finally, a similar clarifying change is proposed to be made to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority) which relates to BX's Price-Time Execution Algorithm. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange proposes to amend the paragraph to provide,

> A Market Maker which receives a Directed Order is a DMM with respect to that Directed Order. DMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of a Directed Order, provided the DMM's quote is at or improves on the better of the internal BBO or the NBBO, the DMM will be afforded a participation entitlement . . .[19]

While this proposed change relates to DMM Priority, it is proposed to be changed for the same reasons described herein for LMM Priority. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm.

Currently, BX Options 3, Section 10(a)(1)(C)(1)(b)(1) provides,

> (1) A BX Options LMM shall receive the greater of:
> (a) Contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;
> (b) 50% of remaining interest if there is one or no other Market Maker at that price;
> (c) 40% of remaining interest if there is two other Market Makers at that price;
> (d) 30% of remaining interest if there are more than two other Market Makers at that price; or
> (e) the Directed Market Maker (''DMM'') participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).
> Rounding will be up to the nearest integer.

(SR–BX–2020–017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Rules in Connection With a Technology Migration).

[15] *Id* at 48276.

[16] *See* Options 3, Section 10(a)(1)(C)(1)(b), as proposed, ''An LMM may be assigned by the Exchange in each option class in accordance with Options 2, Section 3. LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's *quote* is at or improves on the *better of the NBBO or internal BBO,* the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows: . . .''. A similar change is proposed within Options 3, Section 10(a)(1)(C)(2)(ii).

[17] The amendment to change the term ''bid/offer'' to ''quote'' was described above.

[18] Options 2, Section 10(a)(1) provides, ''When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.''

[19] Amending the terms ''bid/offer'' to the term ''quote'' in this paragraph was described above.

Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

The Exchange proposes to amend Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) to remove the words ''or no.'' Today, if there was no other Market Maker order or quote present, the Lead Market Maker would receive the allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario. The removal of the words ''or no'' would align the rule text to the current System functionality. This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) which describes the Size Pro-Rata Execution Algorithm.

The Exchange also proposes to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) by adding the words ''order or quote'' or ''orders or quotes,'' as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) allocation. This amendment would clarify current System behavior. This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b)–(d) which describes the Size Pro-Rata Execution Algorithm.

The Exchange also proposes to correct a grammatical error within BX Options 3, Section 10(a)(1)(C)(1)(b)(1)(c) to correct ''is'' to ''are.''

The Exchange proposes to update the cross-reference within Options 3, Section 10(a)(1)(C)(1)(b)(1)(e), related to BX's Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(ii)(1)(e), related to the Size Pro-Rata Execution Algorithm, as the Exchange proposes new rule text with this proposal which impacted the numbering/lettering.

Currently, BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to BX's Price-Time Execution Algorithm, provides, ''Orders for 5 contracts or fewer shall be allocated to the LMM. The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow orders of 5 contracts or less executed by the LMM to account for more than 40% of the volume executed on the Exchange. This provision shall not apply if the order of 5 contracts or fewer is directed to a DMM who is quoting at or better than the NBBO.'' The Exchange proposes to replace this language with rule text similar to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c).[20]

Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer.

Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause current Options 3, Section 10(a)(1)(C)(2)(iii), which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii), related to the Size Pro-Rata Execution Algorithm, the Exchange proposes to provide,

The Exchange proposes to provide the Entitlement for Orders of 5 contracts or fewer shall be allocated to the Lead Market Maker as described below. The allocation will only apply after the Opening Process and shall not apply to auctions. A Lead Market Maker is not entitled to receive a number of contracts that is greater than the size that is associated with its quote. On a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%.

While the percentage of 40% of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers differs from Phlx, which is 25%,[21] the Exchange notes it is retaining BX's current percentage which is specified within current BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to the Price-Time Execution Algorithm, and current Options 3, Section 10(a)(1)(C)(2)(ii)(2), related to the Size Pro-Rata Execution Algorithm.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c)(1), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii)(1), related to the Size Pro-Rata Execution Algorithm, the Exchange proposes to provide,

A Lead Market Maker is entitled to priority with respect to Orders of 5 contracts or fewer, including when the Lead Market Maker is also the Directed Market Maker, if the Lead Market Maker has a quote at the better of the internal BBO or the NBBO, with no other Public Customer or Directed Market Maker interest with a higher priority.

Of note, Phlx describes the manner in which All-or-None Orders are handled in its related rule,[22] which order type differs on BX. Also, the term ''PBBO'' is similar to BX's term ''BBO''.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c)(2), related to the Price-Time Execution Algorithm, the Exchange proposes to provide:

If the Lead Market Maker's quote is at the better of the internal BBO or the NBBO, with other Public Customer (including when the Lead Market Maker is also the Directed Market Maker) or other Directed Market Maker interest with a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer; thereafter orders will be allocated pursuant to paragraph (a)(1)(C)(1)(e).

Similar rule text, with the appropriate cross-reference, is proposed within Options 3, Section 10(a)(1)(C)(2)(iii)(2), related to the Size Pro-Rata Execution

[20] Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

[21] *See* Phlx Options 3, Section 10(a)(1)(D).

[22] Phlx has All-or-None Orders which are permitted to rest on the Order Book. *See* Phlx Options 3, Section 7(b)(5). BX's All-or-None Orders must be executed in its entirety or not at all and do not rest on the Order Book. *See* BX Options 3, Section 7(a)(8). Because BX's All-or-None Orders do not rest on the Order Book, the treatment of such orders would be different on the two markets (Phlx and BX) and therefore it is consistent to align its treatment of order types within the allocation rule with its treatment of those orders pursuant to BX Options 3, Section 7.

Algorithm.[23] Similar to the aforementioned paragraph, All-or-None Orders are handled differently on Phlx and BX, and the term ''PBBO'' is similar to BX's term ''BBO''.

As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The Lead Market Maker would be entitled to the entire allocation of the Order of 5 contracts or fewer where the Lead Market Maker is also the Directed Market Maker and the Lead Market Maker receives the Directed Order and has a quote at the best price (described as the better of the internal BBO or the NBBO) at the time the Directed Order was received. This means that no other interest, including Public Customer or Directed Market Maker interest is present with a higher priority, if the Lead Market Maker is to receive the allocation.

If, for example, a Public Customer is resting at the NBBO at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer. The Lead Market Maker will continue to not be entitled to priority with respect to allocation of Orders of 5 contracts or fewer because there is interest present with a higher priority or because the Lead Market Maker is not quoting at the NBBO. In these situations, the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which both describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations.

This is the manner in which the System behaves today and the rule is being amended to expand upon the current text, similar to Phlx, and provide additional granularity as to the circumstances in which a Lead Market Maker would be entitled to an allocation for Orders of 5 contracts or fewer.[24]

The Exchange proposes to amend current Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority), related to Price-Time Execution, which will be redesignated as ''d'', to capitalize the term ''Opening Process,'' which is capitalized elsewhere in the rule. A similar change is proposed within current Options 3, Section 10(a)(1)(C)(2)(iii) (DMM Priority), related to Size Pro-Rata Execution, which will be redesignated as ''iv.''

The Exchange proposes to add a title to current BX Options 3, Section 10(a)(1)(C)(1)(d), ''All Other Remaining Interest,'' similar to Phlx Options 3, Section 10(a)(1)(d), and redesignate this section as ''e''. The Exchange also proposes to redesignate current BX Options 3, Section 10(a)(1)(C)(1)(e) as ''f''.

Current Options 3, Section 10(a)(1)(C)(2)(iv) (Market Maker Priority), related to Size Pro-Rata Execution, is proposed to be renumbered as ''(v).''

The Exchange proposes to relocate the last sentence of current Options 3, Section 10(a)(1)(C)(2)(iv) to new Options 3, Section 10(a)(1)(C)(2)(vi) with the Size Pro-Rata Execution Algorithm to conform the rule text to Phlx's rule text and add the title ''All Other Remaining Interest'' to provide,

If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

The Exchange notes that this same paragraph currently exists within BX Options 3, Section 10(a)(1)(C)(1)(e), related to Price-Time Execution, but those paragraphs differ because a Market Maker Priority overlay does not exist in the Price-Time Execution Algorithm on BX, but it does exist in the Size Pro-Rata Execution Algorithm on BX.

Finally, current Options 3, Section 10(a)(1)(C)(2)(v), related to Size Pro-Rata Execution, is proposed to be renumbered as ''(vii).''

Options 3, Section 15(b)(1)

Today, the Exchange offers an Acceptable Trade Range (''ATR'') risk protection that sets dynamic boundaries within which quotes and orders may trade, and is designed to prevent the Exchange's System from experiencing dramatic price swings by preventing the execution of quotes and orders beyond the thresholds set by the protection.

As presently set forth in Options 3, Section 15(b)(1), the System will calculate an ATR to limit the range of prices at which an order will be allowed to execute. ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders and the reference price + (x) for buy orders).[25] Upon receipt of a new order, the reference price is the National Best Bid (''NBB'') for sell orders and the National Best Offer (''NBO'') for buy orders or the last price at which the order is posted, whichever is higher for a buy order or lower for a sell order.[26] If an order reaches the outer limit of the ATR (the ''Threshold Price'') without being fully executed pursuant to Options 3, Section 15(b)(1)(A), it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order or lower for a sell order) then becomes the reference price for calculating a new ATR. If the order remains unexecuted, a new ATR will be calculated and the order will execute, route, or post up to the new Threshold

[23] Options 3, Section 10(a)(1)(C)(2)(iii)(2) proposes to provide, ''(2) If the Lead Market Maker's quote is at the better of the internal BBO, excluding All-or-None Orders that cannot be satisfied, or the NBBO, with other Public Customer (including when the Lead Market Maker is also the Directed Market Maker) or other Directed Market Maker interest with a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(2)(v); thereafter orders will be allocated pursuant to paragraph (a)(1)(C)(2)(vi).

[24] Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term ''PBBO'' is similar to BX's term ''BBO''.

[25] ATR settings are tied to the option premium.

[26] In the event of a crossed ABBO, ATR will use the NBO instead of the NBB for incoming sell orders and the NBB instead of the NBO for incoming buy orders as the reference price, unless the order's last posted price is more aggressive than the NBO (for the sell order) or the NBB (for the buy order).

Price. This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order has been subject to a configurable number of instances of the ATR as determined by the Exchange (in which case it will be returned).[27] During the Posting Period, pursuant to Options 3, Section 15(b)(1)(B), the Exchange will disseminate as a quotation: (i) The Threshold Price for the remaining size of the order triggering the ATR and (ii) on the opposite side of the market, the best price will be displayed using the ''non-firm'' indicator message in accordance with the specifications of the network processor.[28] Following the final Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

The Exchange now proposes to add that ATR will not be available for All-or-None Orders (''AONs'')[29] or Minimum Quantity Orders (''MQOs'').[30] Although this change reflects current functionality, the rule is silent in this regard. The Exchange does not believe that ATR is necessary for AONs or MQOs because by definition, these orders types must meet a sufficient size requirement before executing. As described above, applying ATR may result in an order receiving partial executions at multiple price points. The Exchange therefore believes that it would contradict the explicit instructions of a BX Participant using AONs and MQOs to apply ATR to these order types. The following examples illustrate how the ATR protection applies today:

Example 1

1. ATR band in this price range is set to $0.07
2. Assume the following market:
   a. MM1 Quote sets BBO 2.00 (10) × 2.12 (10)
   b. MM2 Quote 1.99 (10) × 2.13 (10)
   c. MM3 Quote 1.98 (10) × 2.13 (10)
   d. Customer Order to Buy 10 @ 1.97
   e. Firm Order to Buy 10 @ 1.93
   f. BD Order to Buy 10 @ 1.92 (this is .01 past ATR band since 2.00 − 0.07 = 1.93)
3. Incoming AON Order to Sell 60 @ 1.92
4. The incoming AON trades with all of the bids layering the book, trading its total of 60 contracts without regard to the ATR band

Example 2

1. ATR band in this price range is set to $0.07
2. Assume the following market:
   a. MM1 Quote sets BBO 2.00 (10) × 2.12 (10)
   b. MM2 Quote 1.99 (10) × 2.13 (10)
   c. MM3 Quote 1.98 (10) × 2.13 (10)
   d. Customer Order to Buy 10 @ 1.97
   e. Firm Order to Buy 10 @ 1.93
   f. BD Order to Buy 10 @ 1.92 (this is .01 past ATR band since 2.00 − 0.07 = 1.93)
3. Incoming DAY Order to Sell 100 @ 1.92
4. The incoming DAY Order trades at each price level down to 1.93, for a total of 50 contracts, but does not trade with the resting interest at 1.92 yet
5. DAY Order then posts at the ATR band of 1.93 during the ATR Posting Period
6. After the ATR Posting Period concludes, the DAY Order trades with the BD Order @ 1.92
7. Remainder of the DAY Order now books at its limit price of 1.92 as there is no more tradeable interest

Lastly, the Exchange proposes the following minor, corrective changes in paragraph (b)(1)(A) of Options 3, Section 15 to replace: (i) ''New Acceptable Trade Range'' with ''new Acceptable Trade Range,'' and (ii) ''new Acceptable Trade Range Threshold Price'' with ''new Threshold Price'' to conform to the defined term.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5) of the Act,[32] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10(a) to remove inadvertent wording is consistent with the Act because the removal of the wording will make the rule text easier to understand.

Options 3, Section 7

The Exchange's proposal to amend Options 3, Section 7(a)(4) to make the term ''require'' plural is technical and non-substantive.

The Exchange's proposal to amend Options 3, Section 7 to describe a Contingency Order is consistent with the Act because it adds more context to the current rules. Today, BX has two order types which have contingencies: (1) Minimum Quantity Orders and (2) All-or-None Orders. The Exchange proposes to formalize the definition of a ''Contingency Order'' within proposed new Options 3, Section 7(a)(4)(A) to mean Minimum Quantity Orders and All-or-None Orders to bring greater clarity to its rules. The Exchange proposes to state within proposed new Options 3, Section 7(a)(4)(A) that Contingency Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously, which is true of Minimum Quantity Orders and All-or-None Orders today.[33]

The Exchange's proposal to adopt rule text which more clearly explains how the System executes Minimum Quantity Orders and All-or-None Orders, which both have a size requirement, within the Order Book protects investors and the public interest because it adds specificity to the rules with respect to current System handling. Specifically, this amendment will clarify the current rule to more specifically describe the manner in which the System currently handles Contingency Orders on BX. The Exchange notes that the handling of such orders as described by the proposed rule text within Options 3, Section 7(a)(4)(A) is consistent with the Exchange's allocation methodology within Options 3, Section 10 and description of order types within Options 3, Section 7. The additional clarity makes clear that because of the size requirements of Minimum Quantity Orders and All-or-None Orders, that those orders must be satisfied simultaneously to avoid any priority conflict on the Order Book which considers current displayed NBBO prices to avoid locked and crossed markets as well as trade-throughs. Also, BX is adopting rule text which is similar, in relevant part, to a provision in the definition of Minimum Quantity Order to Cboe Rule 5.6(b). Similar to BX's Minimum Quantity Orders and

[27] In the case of ''Do Not Route'' or ''DNR'' Orders that are locked against the ABBO, such orders will pause their ATR iterations (*i.e.,* a new ATR will not be calculated based on the reference price at that time) and remain this way until the ATR process can be completed.

[28] During ATR iterations, route timers continue to run and ''firm'' quote posting can occur if, for example, the order is re-priced one minimum price variant away from the ABBO pursuant to Options 3, Section 5(d) to comply with applicable Trade-Through and Locked/Crossed market restrictions, in which case the quotation will disseminate as a ''firm'' quote.

[29] *See* note 5 above.

[30] *See* note 4 above.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] Today, Minimum Quantity Orders and All-or-None Orders both have a time-in-force designation of Immediate or Cancel and both have a size requirement. A Minimum Quantity Order requires that a specified minimum quantity of contracts be obtained, or the order is cancelled. Similarly, an All-or-None Order is to be executed in its entirety at the specified size or the order will be cancelled.

All-or-None Orders, Cboe's Minimum Quantity Orders will only execute against multiple, aggregated orders if the executions would occur simultaneously because of the size contingency.

The Exchange's proposal to replace references to the term ''Limit Order Price Protection'' within Options 3, Section 7 with the correct term, ''Order Price Protection'' is consistent with the Act. Amending the inadvertent references to a ''Limit Order Price Protection'' within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B) to the correct name of the risk protection will bring clarity to these cross-references.

Options 3, Section 10

The Exchange proposes to amend Options 3, Section 10, Order Book Allocation, to conform this rule, in relevant part, to Phlx Options 3, Section 10 as discussed herein. The Exchange's proposal to amend rule text, similar to Phlx,[34] to insert the term ''quote'' in place of the terms ''bid'' and ''offer'' in the third sentence is consistent with the Act. The term ''quote'' and the term ''bid/offer'' are, where changes are proposed herein, interchangeable terms that are intended to differentiate ''quotes'' or ''bid/offer'' from an ''order.'' Of note, only BX Market Makers may enter a ''quote'' or a ''bid/offer.'' The Exchange's proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

The Exchange's proposal to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace ''Exchange's disseminated price'' with ''better of the NBBO or internal BBO'' is consistent with the Act because amending the rule text will protect investors and the general public by making clear that a re-priced order is accessible on BX's Order Book at the non-displayed price. Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. The Exchange believes that the addition of this rule text will allow BX to define an ''internal BBO'' within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices while resting on the Order Book.[35] The proposed rule text will make clear within Options 3, Section 10 that, as is the case today, if the LMM's quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation. The proposed rule text is a more precise description which better articulates current behavior, although the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange's disseminated price. This System behavior is not new, rather it is being described in greater detail herein as in other parts of the Rulebook.[36]

Similarly, the Exchange's proposal to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) to change ''. . . is at or improves on the NBBO . . .'' to ''. . . is at or improves on the better of the NBBO or internal BBO'' is consistent with the Act. While today, the DMM's quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,[37] the re-pricing of orders would permit a DMM's quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1).[38] The changes described in this paragraph are not System or functionality changes but provide greater clarity as to the way the System functions.

Finally, a similar clarifying change proposed to be made to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority), which relates to BX's Price-Time Execution Algorithm, is also consistent with the Act. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange proposes to amend the paragraph related to DMM Priority for the same reasons described herein for LMM Priority.[39]

The Exchange proposal to amend BX Options 3, Section 10(a)(1)(C)(1)(b)(1) to remove the words ''or no'' is consistent with the Act as the proposed change will bring greater clarity to the Exchange's rule. Today, if there was no other Market Maker order or quote present, the Lead Market Makers would receive the allocation based described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario. Further, the removal of the words ''or no'' would align the rule text to the current System functionality.[40]

The Exchange's proposal to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) by adding the words ''order or quote'' or ''orders or quotes,'' as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker is consistent with the Act. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) allocation. This amendment would clarify current System behavior for the protection of investors and the general public.[41]

The Exchange's proposal to reorganize BX Options 3, Section 10(a)(1)(C)(1)(b)(2),[42] related to BX's

[34] *See* Phlx Options 3, Section 10(a)(1)(B).

[35] BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange's proposal seeks to conform the concept of re-pricing and an internal BBO, which is described within BX Options 3, Section 4, Entry and Display of Quotes with the proposed change to BX Options 3, Section 10(a)(1)(C)(1)(b).

[36] The proposed change within Options 3, Section 10(a)(1)(C)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within BX Options 3, Section 10(a)(1)(C)(2)(ii) which describes Size Pro-Rata Execution Algorithm.

[37] Options 2, Section 10(a)(1) provides, ''When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.''

[38] The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as ''(iv)'' to account for new rule text proposed herein.

[39] A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm

[40] This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b) which describes the Size Pro-Rata Execution Algorithm

[41] This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b)–(d) which describes the Size Pro-Rata Execution Algorithm.

[42] Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause

Price-Time Execution Algorithm, and replace this language with rule text similar to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c)[43] is consistent with the Act. Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer.

With respect to proposed new BX Options 3, Section 10(a)(1)(C)(1)(c), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii), related to the Size Pro-Rata Execution Algorithm, the Exchange notes it is retaining BX's current percentage which is specified within current BX Options 3, Section 10(a)(1)(C)(1)(b)(2), related to the Price-Time Execution Algorithm, and current Options 3, Section 10(a)(1)(C)(2)(ii)(2), related to the Size Pro-Rata Execution Algorithm.[44] The Exchange also proposes to adopt similar Phlx provisions into Options 3, Section 10(a)(1)(C)(1)(c)(1), related to the Price-Time Execution Algorithm, and Options 3, Section 10(a)(1)(C)(2)(iii)(1). Finally, the Exchange proposes to adopt similar Phlx provisions into new BX Options 3, Section 10(a)(1)(C)(1)(c)(2), related to the Price-Time Execution Algorithm and new Options 3, Section 10(a)(1)(C)(2)(iii)(2), related to the Size Pro-Rata Execution Algorithm, with respectively appropriate cross-references.

As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The Lead Market Maker would be entitled to the entire allocation of the Order of 5 contracts or fewer where the Lead Market Maker is also the Directed Market Maker and the Lead Market Maker receives the Directed Order and has a quote at the best price (described as the better of the internal BBO or the NBBO) at the time the Directed Order was received. This means that no other interest, including Public Customer or Directed Market Maker interest is present with a higher priority, if the Lead Market Maker is to receive the allocation. If, for example, a Public Customer is resting at the NBBO at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer. The Lead Market Maker will continue to not be entitled to priority with respect to allocation of Orders of 5 contracts or fewer because there is interest present with a higher priority or because the Lead Market Maker is not quoting at the NBBO. In these situations, the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which both describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. This is the manner in which the System behaves today and the proposed new rule text which is being amended to expand upon the current text, similar to Phlx, will provide additional granularity as to the circumstances in which a Lead Market Maker would be entitled to an allocation for Orders of 5 contracts or fewer[45] for the protection of investors and the general public.

The remainder of the proposed rule changes within Options 3, Section 10 which include renumbering, capitalizations, relocation of rule text, addition of headers and technical amendments are non-substantive.

Options 3, Section 15

The Exchange believes that its proposal to amend the ATR rule in Options 3,

Section 15(b)(1) would promote just and equitable principles of trade as well as protect investors and the public interest. The Exchange notes that the ATR functionality, including the exclusion of certain size contingency order types from ATR protections, is not new or novel, and is available on other options exchanges.[46] The proposed rule change codifies existing ATR functionality by providing that ATR will not be available for AONs and MQOs. Although this change reflects current functionality, the existing rule is silent in this regard. As discussed above, the Exchange does not believe that ATR is necessary for AONs or MQOs because by definition, these orders types must meet a sufficient size requirement before executing. Because ATR may result in an order receiving partial executions at multiple price points, the Exchange believes that it would contradict the explicit instructions of a Participant using AONs and MQOs to apply ATR to these order types. Accordingly, the proposed changes would add greater transparency and internal consistency to Exchange rules regarding the interaction of AONs and MQOs with this risk protection, and therefore provide more certainty to Participants as to the application of the rule. The Exchange also notes that AONs and MQOs are still subject to other Exchange risk protections like the Order Price Protection (''OPP'')[47] and Market Order

current Options 3, Section 10(a)(1)(C)(2)(iii) which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

[43] Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

[44] Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term ''PBBO'' is similar to BX's term ''BBO''.

[45] Phlx's similar rule text at Phlx Options 3, Section 10(a)(1)(D) is similar, however Phlx's rule has a different percentage than proposed for BX, despite the execution algorithm. Phlx provides that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 25%. BX's rules both provide that on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%. Also, as noted herein, All-or-None Orders are handled differently on Phlx and BX, and the term ''PBBO'' is similar to BX's term ''BBO''.

[46] *See, e.g.,* Nasdaq ISE (''ISE'') Options 3, Section 15(a)(2)(A) (providing that ISE's ATR will not be available for AONs).

[47] *See* Options 3, Section 15(a)(1).

Spread Protection (''MOSP'') [48] that are designed to prevent executions at far away prices. As such, the Exchange believes that its proposal will continue to protect investors by limiting executions that are away from prevailing market prices.

*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.

Options 3, Section 7

The Exchange's proposal amend Options 3, Section 7 to describe a Contingency Order does not impose an undue burden on competition because it adds more context to the current rules. Contingency Orders will trade against bids layering the order book to satisfy their size contingency to the extent that such size may be simultaneously executed against multiple orders on the order book in the aggregate for that contingency order. The Exchange believes that the addition of this rule text adds specificity to the rules with respect to current System handling. The proposal to renumber the rule is non-substantive.

The Exchange's proposal to replace references to the term ''Limit Order Price Protection'' within Options 3, Section 7 with the correct term, ''Order Price Protection'' does not impose an undue burden on competition. Amending the inadvertent references to a ''Limit Order Price Protection'' within Options 3, Section 7(a)(1), Options 3, Section 7(b)(3)(B), and Options 3, Section 7(e)(1)(B) to the correct name of the risk protection will bring clarity to these cross-references.

Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10, Order Book Allocation, in relevant part as discussed herein, to conform this rule to Phlx Options 3, Section 10, does not impose an undue burden on competition, rather it will bring greater clarity to BX's allocation rule.

The Exchange's proposal to amend rule text, similar to Phlx,[49] to insert the term ''quote'' in place of the terms ''bid'' and ''offer'' does not impose an undue burden on competition. The term ''quote'' and the term ''bid/offer'' are, where changes are proposed herein, interchangeable terms that are intended to differentiate ''quotes'' or ''bid/offer'' from an ''order.'' [50] Of note, only BX Market Makers may enter a ''quote'' or a ''bid/offer.'' The Exchange's proposal regarding this amendment is non-substantive as the words proposed to be amended herein are interchangeable.

The Exchange's proposal to amend the third sentence of Options 3, Section 10(a)(1)(C)(1)(b) to replace ''Exchange's disseminated price'' with ''better of the NBBO or internal BBO'' does not impose an undue burden on competition because amending the rule text will make clear that a re-price order is accessible on BX's Order Book at the non-displayed price. Today, BX re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations. Orders which lock or cross an away market will automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. The re-priced order is displayed on OPRA. The order remains on BX's Order Book and is accessible at the non-displayed price. The Exchange believes that the addition of this rule text will allow BX to define an ''internal BBO'' within its rules when describing re-priced orders that remain on the Order Book and are available at non-displayed prices, which are resting on the Order Book.[51] The proposed rule text will make clear within Options 3, Section 10 that, as is the case today, if the LMM's quote is at or improves on the better of the better of the NBBO or internal BBO, the LMM is entitled to the allocation. The proposed rule text is a more precise description, although the Exchange notes that the current rule text is not inaccurate as an LMM must improve on Exchange's disseminated price.

Similarly, the Exchange's proposal to amend a paragraph within Options 3, Section 10(a)(1)(C)(1)(b)(1) does not impose an undue burden on competition. While today, the DMM's quote must be at or improve upon the NBBO as provided for within Options 2, Section 10,[52] the re-pricing of orders would permit a DMM's quote that is at or improves on the better of the NBBO or internal BBO to be subject to the DMM allocation described within Options 3, Section 10(a)(1)(C)(1)(b)(1).[53]

A similar change to Options 3, Section 10(a)(1)(C)(1)(c) (DMM Priority) which relates to BX's Price-Time Execution Algorithm does not impose an undue burden on competition. Similar to what was noted above for Options 3, Section 10(a)(1)(C)(1)(b)(1), the Exchange's proposal amends the paragraph related to DMM Priority for the same reasons described herein for LMM Priority.[54]

The Exchange proposal to amend BX Options 3, Section 10(a)(1)(C)(1)(b)(1) to remove the words ''or no'' does not impose an undue burden on competition as the proposed change will bring greater clarity to the Exchange's rule. Today, if there was no other Market Maker order or quote present, the Lead Market Makers would receive the allocation based described within Options 3, Section 10(a)(1)(C)(1)(b)(1)(a) because there would be no other interest present to require a split allocation in this scenario.

The Exchange's proposal to be more specific with the text within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) by adding the words ''order or quote'' or ''orders or quotes,'' as appropriate, after Market Maker because the System is looking for other orders or quotes from a Market Maker to determine the percentage of the allocation that will be provided to that Lead Market Maker does not impose an undue burden on competition. If a Market Maker entered both an order and a quote, the System would count the order and quote from the same Market Maker separately for purposes of determining the number of other Market Makers present for Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d)

[48] *See* Options 3, Section 15(a)(2).

[49] *See* Phlx Options 3, Section 10(a)(1)(B).

[50] *See* BX Options 1, Section 1(a)(44). The term ''order'' means a firm commitment to buy or sell options contracts as defined in Section 7 of Options 3.

[51] BX Options 5, Section 4, Order Routing, describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C). The Exchange's proposal seeks to conform the concept of re-pricing and an internal BBO, which is described within BX Options 3, Section 4, Entry and Display of Quotes with the proposed change to BX Options 3, Section 10(a)(1)(C)(1)(b).

[52] Options 2, Section 10(a)(1) provides, ''When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.''

[53] The proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm, and which is proposed to be renumbered as ''(iv)'' to account for new rule text proposed herein.

[54] A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(iii) which describes the Size Pro-Rata Execution Algorithm.

allocation. This amendment would clarify current System behavior.[55]

The Exchange's proposal to reorganize BX Options 3, Section 10(a)(1)(C)(1)(b)(2),[56] related to BX's Price-Time Execution Algorithm, and replace this language with rule text similar to Phlx Options 3, Section 10(a)(1)(D) and redesignate the provision as BX Options 3, Section 10(a)(C)(1)(c)[57] does not impose an undue burden on competition. Reorganizing this part of the rule to mirror Phlx is not a substantive change. The Exchange is not otherwise amending the System, rather these changes are being made to conform the rule text to Phlx rule text, which more specifically describes the scenarios in which a Lead Market Maker would be entitled to Orders of 5 contracts or fewer. As is the case today, in order to be entitled to receive Orders for 5 contracts or fewer, the Lead Market Maker's quote must be at the better of the internal BBO or the NBBO with no other Public Customer or Directed Market Maker interest which has a higher priority. If the Lead Market Maker is quoting at the better of the internal BBO or the NBBO with other Public Customer or Directed Market Maker interest present which has a higher priority at the time of execution, a Lead Market Maker is not entitled to priority with respect to Orders of 5 contracts or fewer, however the Lead Market Maker is eligible to receive such contracts pursuant to paragraph (a)(1)(C)(1)(b)(1)(e) for Price-Time Execution, and paragraph (a)(1)(C)(2)(vi) for Size Pro-Rata Execution, which describe the treatment of all other remaining interest after Lead Market Maker and Directed Market Maker allocations. The remainder of the proposed rule changes within Options 3, Section 10 which include renumbering, capitalizations, relocation of rule text, addition of headers and technical amendments are non-substantive.

Options 3, Section 15

The Exchange believes that its proposal to amend the ATR rule in Options 3, Section 15(b)(1) does not impose an undue burden on competition. The proposed rule change codifies existing ATR functionality by providing that ATR will not be available for AONs and MQOs, and therefore provides more certainty to Participants as to the application of the rule. The Exchange notes that the ATR functionality, including the exclusion of certain size contingency order types from ATR protections, is not new or novel, and is available on other options exchanges.[58]

*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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[59] and Rule 19b–4(f)(6) thereunder.[60] 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.[61]

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–BX–2021–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–003 and should be submitted on or before March 26, 2021.

[55] This proposed change within Options 3, Section 10(a)(1)(C)(1)(b)(1)(b)–(d) relates to BX's Price-Time Execution Algorithm. A similar change is proposed in identical rule text contained within current Options 3, Section 10(a)(1)(C)(2)(ii)(1)(b)–(d) which describes the Size Pro-Rata Execution Algorithm.

[56] Similar rule text describing entitlement for order of 5 contracts or fewer replacement is proposed within Options 3, Section 10(a)(1)(C)(2)(iii), relating to the Size Pro-Rata Execution Algorithm, and this rule text will cause current Options 3, Section 10(a)(1)(C)(2)(iii) which describes DMM Priority, to be redesignated as Options 3, Section 10(a)(1)(C)(2)(iv) to account for the new rule text.

[57] Current BX Options 3, Section 10(a)(C)(1)(c) relates to DMM Priority, the Exchange also proposes to redesignate that section as new BX Options 3, Section 10(a)(C)(1)(d) to account for the new rule text.

[58] *See, e.g.,* ISE Options 3, Section 15(a)(2)(A) (providing that ISE's ATR will not be available for AONs).

[59] 15 U.S.C. 78s(b)(3)(A)(iii).

[60] 17 CFR 240.19b–4(f)(6).

[61] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–04529 Filed 3–4–21; 8:45 am]

**BILLING CODE 8011–01–P**

[62] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 11365]**

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Nam June Paik'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Nam June Paik'' at the San Francisco Museum of Modern Art, San Francisco, California and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Matthew R. Lussenhop,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2021–04632 Filed 3–4–21; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Request To Release Property at Charlotte Douglas International Airport, Charlotte, NC (CLT)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration is requesting public comment on a request by City of Charlotte, to release of land (69.273 acres) at Charlotte Douglas International Airport from federal obligations.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** Comments on this notice may be emailed to the FAA at the following email address: FAA/Memphis Airports District Office, Attn: Duane L. Johnson, Assistant Manager, *Duane.Johnson@faa.gov.*

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Haley Gentry, Acting Aviation Director, Charlotte Douglas International Airport at the following address: 5601 Wilkinson Blvd., Charlotte, NC 28208.

**FOR FURTHER INFORMATION CONTACT:** Duane L. Johnson, Assistant Manager, Federal Aviation Administration, Memphis Airports District Office, 2600, Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482, (901) 322–8191, or *Duane.Johnson@faa.gov.* The application may be reviewed in person at this same location, by appointment.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the request to release property for disposal at Charlotte Douglas International Airport, 5601 Wilkinson Blvd., Charlotte, NC 28208, under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at Charlotte Douglas International Airport (CLT) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of these properties does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The request consists of the following:

The City of Charlotte is proposing the release of airport property totaling 69.273 acres, more or less. This land is to be used by the Norfolk Southern Railway Company (NSRC) for the expansion of an Intermodal Rail Facility (69.273 acres fee simple). NRSC has the option to purchase this land for the same non-aeronautical purpose under a current long term lease. The release of land is necessary to comply with FAA Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at Charlotte Douglas International Airport (CLT) being changed permanently from aeronautical to non-aeronautical use and releases the lands from the conditions of the Airport Improvement Program (AIP) Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in FAA approved eligible AIP projects for aviation facilities at Charlotte Douglas International Airport (CLT). The proposed use of this property is compatible with airport operations. The property is located on Charlotte Douglas International Airport, bordered on the west by Runway 18R–36L, bordered on the east by Runway 18C–36C, bordered on the north by Taxiway N, and by West Boulevard to the south.

This request will release this property from federal obligations. This action is taken under the provisions of 49 U.S.C. 47107(h)(2).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Charlotte Douglas International Airport.

Issued in Memphis, Tennessee, on March 2, 2021.

**Duane Leland Johnson,**

*Assistant Manager, Memphis Airports District Office, Southern Region.*

[FR Doc. 2021–04642 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice for Waiver of Aeronautical Land Use Assurance; Rogue Valley International-Medford Airport, Medford, Oregon

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** Notice is being given that the FAA is considering a proposal from the County of Jackson Airport Director to

change certain portions of the airport from aeronautical use to non-aeronautical use at Rogue Valley International-Medford Airport, Medford, Oregon. The proposal consists of a partial parcel on the southwest corner of the airfield.

**DATES:** Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Ms. Mandi M. Lesauis, Program Specialist, Seattle Airports District Office, *mandi.lesauis@faa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry Brienza, Airport Director, County of 1000 Terminal Loop Parkway, Medford, OR 97504; or Mandi M. Lesauis, Program Specialist, Seattle Airports District Office, 2200 S. 216 St., Des Moines, WA 98198, *mandi.lesauis@faa.gov,* (206) 231–4140. Documents reflecting this FAA action may be reviewed at the above locations.

**SUPPLEMENTARY INFORMATION:** Under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2), the FAA is considering a proposal from the Airport Director, County of Jackson, to change a portion of the Rogue Valley International-Medford Airport from aeronautical use to non-aeronautical use. The proposal consists of a 7.6-acre partial parcel on the southwest side of the airport.

The partial parcel is vacant, landlocked and does not have airfield access. The proposed property will be developed for commercial purposes such as a hotel. The FAA concurs that the parcels are no longer needed for aeronautical purposes. The proposed use of this property is compatible with other airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in **Federal Register** on February 16, 1999.

Issued in Des Moines, Washington, on March 2, 2021.

**Warren D. Ferrell,**

*Acting Manager, Seattle Airports District Office.*

[FR Doc. 2021–04649 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA 2021–0002]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for emergency OMB approval.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review for an emergency approval of a new, mandatory information collection. The FTA requests OMB approve this collection within 15 days. The FTA is collecting this information to inform FTA actions to support the transit industry's COVID–19 recovery efforts. The ICRs describe the nature of the information collection and their expected burdens.

**DATES:** Comments must be submitted on or before March 22, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 15 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* All comments received are part of the public record. Comments will generally be posted without change. Upon receiving the requested six-month emergency approval by OMB, FTA will follow the normal PRA procedures to obtain extended approval for this proposed information collection.

**FOR FURTHER INFORMATION CONTACT:** Candace Key, Office of Transit Safety and Oversight—System Safety Division, 1200 New Jersey Avenue SE, Mail Stop TSO–10, Washington, DC 20590 (202) 366–1783 or *candace.key@dot.gov.*

**SUPPLEMENTARY INFORMATION:** FTA requests public comment on this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden (including hours and cost); (c) ways for FTA to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Transit COVID–19 Response Program.

*OMB Control Number:* 2132–TBD.

*Type of Request:* Request for emergency approval of an information collection.

*Abstract:* COVID–19 continues to pose significant challenges for the transit industry. Numerous transit providers have suspended service and a greater number have reduced service. Yet, throughout the COVID–19 public health emergency, transit agencies across the country continue to provide millions of trips to lifeline services, including transporting healthcare personnel and other essential workers on the front line of the Nation's COVID–19 response. Transit agencies also offer additional essential services to support communities during the public health emergency, such as meal delivery and Wi-Fi access in underserved areas, and have begun offering transportation to vaccination sites. Accordingly, the Cybersecurity and Infrastructure Security Agency designates transit workers as essential critical infrastructure workers.

Transit agencies and other stakeholders have expressed concerns about the risk of COVID–19 to the transit industry and, along with the FTA, have taken steps to address these concerns. Numerous transit agencies have implemented mitigations to limit the transmission of SARS-CoV–2, the virus that causes COVID–19, among their workers and within their systems. Despite these efforts, frontline transit workers remain at high risk for work-related exposure to SARS-CoV–2 because their work-related duties must be performed on-site and involve being in close proximity (<6 feet) to the public or to coworkers. In addition, many transit workers fall within racial and socioeconomic demographics that are at increased risk of getting sick and dying from COVID–19.

In December 2020, the U.S. Food and Drug Administration issued Emergency Use Authorizations for two COVID–19 vaccines. Most States have prioritized distribution of the vaccine to their populations consistent with the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices (ACIP) recommendations on the allocation of COVID–19 vaccines during the first phase of vaccine delivery (Phase 1). Essential workers, including transit workers, are recommended for vaccination in Phase 1b after health care personnel and long term care facility residents. However, FTA's review of State vaccination plans indicates that many States have prioritized transit workers differently than CDC/ACIP guidance and placed another group ahead of transit workers. States have

already begun distributing COVID–19 vaccine doses to high-risk groups, including frontline workers. It may take many months before all frontline transit workers can be vaccinated, though their communities will continue to rely on them to provide critical transportation services every day—including transportation to vaccination sites.

On January 21, 2021, President Biden issued E.O. 13998, ''to save lives and allow all Americans, including the millions of people employed in the transportation industry, to travel and work safely,'' requiring immediate Federal action to mandate masks on public forms of transportation, including transit. On January 29, 2021, the CDC issued an Order requiring the wearing of masks by travelers, including on public transportation, to prevent spread of the virus that causes COVID–19. The CDC Order requires transportation operators to require that all persons wear masks when boarding, disembarking, and for the duration of travel, with certain exemptions. Operators of transportation hubs, which include bus terminals and subway stations, must require all persons wear a mask when entering or on the premises of a transportation hub. Subsequently, the Transportation Security Administration (TSA) issued a Security Directive on February 1, 2021 that implements the CDC Order.

The FTA plays a critical role in providing risk-based guidance and support for the COVID–19 recovery efforts of the transit industry. Accordingly, the FTA will require that respondents provide the following information using a fillable electronic online application: Transit Worker Counts: Total number of transit operators, other frontline essential personnel, and other workers during the reporting period.

COVID–19 Impacts on Transit Agency Service Levels: Yes or no responses to indicate if the agency suspended service, reduced service, or operated at normal levels during the reporting period.

COVID–19 Impacts on Transit Workforce: Cumulative counts of transit worker COVID–19 positives, fatalities, recoveries, and unvaccinated employees during the reporting period, and yes or no responses on whether the agency is requiring workers to be vaccinated, whether the agency has implemented the CDC Order and TSA Security Directive requiring workers and passengers to wear masks.

*Respondents:* FTA will require this information, pursuant to 49 U.S.C. 5334, from recipients and sub-recipients of FTA funds under the Urbanized Area Formula Funding program (49 U.S.C. 5307) or the Formula Grants for Rural Areas program (49 U.S.C. 5311) that operate transit systems or pass through funds to sub-recipients that operate transit systems. Recipients of FTA funds under the Enhanced Mobility of Seniors and Individuals with Disabilities program (49 U.S.C. 5310) are requested to provide this information on a voluntary basis.

*Estimated Average Total Annual Respondents:* 2,390 respondents.

*Estimated Average Total Responses:* 28,680.

*Estimated Annual Burden Hours:* 10,356.

*Estimated Annual Burden per Response:* 5 minutes per Section 5307 or 5311 respondent, 200 minutes per Section 5311 State respondent, and 8 minutes per Section 5310 transit operator respondent.

*Frequency:* Biweekly to monthly through December 31, 2021, or the duration of the COVID–19 public health emergency, whichever comes first.

**Nadine Pembleton,**

*Director Office of Management Planning.*

[FR Doc. 2021–04598 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2019–0150]**

### Pipeline Safety: Request for Special Permit; Natural Gas Pipeline Company of America, LLC

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Natural Gas Pipeline Company of America, LLC (NGPL). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

**DATES:** Submit any comments regarding this special permit request by April 5, 2021.

**ADDRESSES:** Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

*Note:* There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice.

Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

**FOR FURTHER INFORMATION CONTACT:**

*General:* Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

*Technical:* Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA received a special permit request from NGPL, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines. This special permit is being requested in lieu of pipe replacement or pressure reduction for three (3) pipeline segments totaling 570 feet (approximately 0.108 miles) of 36-inch diameter pipe on the Amarillo Lines #3 and #4 Pipelines located in Muscatine County, Iowa, and 655 feet (approximately 0.124 miles) of 30-inch diameter pipe on the Louisiana Line #1 Pipeline located in Vermilion Parish, Louisiana. The proposed special permit will allow operation of the original Class 1 pipe in the Class 3 locations.

The proposed special permit segments have a maximum allowable operating pressure of 712 pounds per square inch gauge (psig) for the NGPL Amarillo Lines #3 and #4 Pipelines and 1,100 psig for the Louisiana Line #1 Pipeline. The Amarillo Lines #3 and #4 Pipelines and the Louisiana Line #1 Pipeline were constructed in 1958, 1973, and 1967, respectively.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the Amarillo Lines #3 and #4 Pipelines and the Louisiana Line #1 Pipeline are available for review and public comments in Docket No. PHMSA–2019–0150. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC on under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2021–04498 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Modifications to Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before March 22, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Office of Hazardous Materials Safety, General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 02, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

SPECIAL PERMITS DATA

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 10915–M | Luxfer Inc | 172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205. | To modify the special permit to authorize additional Division 2.2 and 2.3 gases. (modes 1, 2, 3, 4, 5) |
| 14193–M | Honeywell International Inc. | 172.101(h) | To modify the special permit to add additional portable tanks. (modes 1, 2, 3) |
| 14232–M | Luxfer Inc | 173.302(a), 173.304(a), 180.205. | To modify the special permit to authorize additional 2.2 and 2.3 gases. (modes 1, 2, 3, 4, 5) |
| 16427–M | Washington State Department of Transportation. | 172.101(k) | To modify the special permit to add an additional 1.4S hazmat to the permit. (passenger ferry vessel) |
| 20425–M | Composite Advanced Technologies, LLC. | 173.302(a) | To modify the special permit to waive the annual batch test for composite cylinders. (mode 1) |

SPECIAL PERMITS DATA—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 20499–M | Inmar Rx Solutions, Inc | | To modify the special permit to authorize cargo only aircraft as a mode of transportation. (modes 1, 2, 4) |
| 20801–M | New Avon Company | 172.315(a)(2) | To modify the special permit to authorize cargo vessel as a mode of transportation. (modes 1, 2) |
| 21061–M | KLA Corporation | 173.212, 173.213 | To modify the special permit to authorize a new hazmat to be included in the permit. (modes 1, 4) |
| 21085–M | Omron Robotics and Safety Technologies, Inc. | 172.101(j), 173.185(b)(3) | To modify the special permit to authorize additional supplemental ICAO TI packing instructions. (modes 1, 2, 4) |

[FR Doc. 2021–04602 Filed 3–4–21; 8:45 am]
**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for New Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety, General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 2, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **Special Permits Data** | | | |
| 21192–N | Vacco Industries | | To authorize the transportation in commerce of non-DOT specification receptacles containing certain refrigerant gases housed within a satellite. (modes 1, 4) |
| 21193–N | KULR Technology Corporation. | 172.200, 172.300, 172.700(a), 172.400. | To authorize manufacture, mark, sale, and use of UN specification packagings for the transportation in commerce of batteries including damaged, defective, or recalled lithium ion cells and batteries and lithium metal cells and batteries and those contained in or packed with equipment. (modes 1, 2) |
| 21194–N | Spaceflight, Inc | 173.185(e)(3) | To authorize the transportation in commerce of prototype and low production lithium batteries contained in equipment in alternative packaging by ground transportation. (mode 1) |
| 21195–N | Panasonic Energy Corporation of America. | 173.185(c) | To authorize the transportation in commerce of lithium metal batteries in alternative packaging by motor vehicle. (mode 1) |
| 21198–N | Porsche Cars North America, Inc. | 172.101(j) | To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4) |
| 21199–N | Solvay Fluorides, LLC | 173.227(c) | To authorize the transportation in commerce of TIH liquid in drums that are packaged and packed in accordance with the IMDG Code P602. (mode 1, 2, 3) |

[FR Doc. 2021–04601 Filed 3–4–21; 8:45 am]
BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Actions on Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety, General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 02, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **Special Permits Data—Granted** | | | |
| 10880–M | Austin Powder Company | 172.101(i), 173.35(b), 177.835(a), 177.848(g)(3). | To modify the special permit to authorize cargo vessel as an approved mode of transport. |
| 20u283–M | LG Energy Solution, Ltd. | 172.101(j) | To modify the special permit to authorize the use of 4G fiberboard boxes as outer packaging. |
| 20851–M | Call2Recycle, Inc | 172.200, 172.600, 172.700(a). | To modify the special permit to authorize the transportation of end-of-life lithium batteries up to 1,200 Wh to be shipped in PG II fiberboard boxes. |
| 20904–M | Piston Automotive, LLC | 172.101(j), 173.185(b)(5) | To modify the special permit to authorize the use of alternative packaging which complies with 49 CFR 173.185(b)(5) and Packing Instruction 965 Section 1A.2. |
| 20986–M | Olin Corporation | 172.302(c), 173.26, 173.314(c), 179.13(b). | To modify the special permit to clarify the GRL limit. |
| 20996–M | Norfolk Southern Railway Company. | 174.85(a) | To modify the special permit to remove the requirement for signage on distributed power units. |
| 21097–N | United States Dept. of Geological Survey. | | To authorize the transportation in commerce of methane hydrate in dry shippers using liquefied nitrogen. |
| 21102–N | Subaru Research & Development, Inc. | 172.301(c), 177.834(h) | To authorize the discharge of Division 2.1 and 2.2 hazardous materials from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. |
| 21104–M | Kelley Fuels, Inc | 172.302(c), 172.334(b)(3). | To modify the special permit to authorize the placarding to the lowest flashpoint when switching between straight loads of gasoline and combustible distillate fuels in U.S. DOT specification cargo tank motor vehicles. |
| 21129–N | Alliant Techsystems Operations LLC. | 173.301, 173.302, 178.56(c), 178.56(g), 178.56(i), 178.56(j), 178.56(k), 178.56(m). | To authorize the transportation in commerce of non-DOT specification pressure vessels which incorporate a class 1 component. |
| 21144–N | Consolidated Nuclear Security LLC. | 173.56(b) | To authorize the transportation in commerce of certain materials containing low quantities of explosive substances without requiring approval in accordance with 173.56(b). |
| 21177–N | PLZ Aeroscience Corporation. | 172.301(c), 173.315(a) | To authorize the one time one way transportation of pallets of flammable aerosols that are marked CONSUMER COMMODITY ORM–D instead of Limited Quantity. |
| 21183–N | Lynden Air Cargo, LLC | 172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1). | To authorize the transportation in commerce of Division 1.1, 1.2, 1.3, and 1.4 explosives that are forbidden for transportation aboard aircraft or are in excess of the quantity limitations in Column 9B of the 172.101 HMT via cargo-only aircraft. |
| 21188–N | The Administrators of The Tulane Educational Fund. | 173.199(a)(1) | To authorize the transportation in commerce of non-human primates infected with a Category B material. |

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **Special Permits Data—Denied** | | | |
| **Special Permits Data—Withdrawn** | | | |
| 20450–M | Porsche Cars North America, Inc.. | 172.101(j) | To modify the special permit to authorize a new type of cell for the authorized battery assemblies. |
| 21190–N | AAC Clyde Space | | To authorize the transportation in commerce of low production lithium ion batteries by cargo only aircraft. |

[FR Doc. 2021–04603 Filed 3–4–21; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, April 8, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04527 Filed 3–4–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Tuesday, April 13, 2021 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04534 Filed 3–4–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to a processing error, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

**DATES:** The meeting will be held Wednesday, April 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, April 14, 2021, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04537 Filed 3–4–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to a processing error, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

**DATES:** The meeting will be held Tuesday, April 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Conchata Holloway at 1–888–912–1227 or 336–690–6217.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, April 13, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Cedric Jeans at 1–888–912–1227 or 336–690–6217, or write TAP Office, 4905 Koger Boulevard, Greensboro, NC 27407–2734 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04533 Filed 3–4–21; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Tuesday, April 13, 2021 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04536 Filed 3–4–21; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Fred Smith at 1–888–912–1227 or (202) 317–3087.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, April 8, 2021 at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: March 1, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–04535 Filed 3–4–21; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Family, Caregiver, and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, that the Veterans' Family, Caregiver, and Survivor Advisory Committee will meet virtually via Webex on March 30, 2021. The meeting session will begin and end as follows:

| Date: | Time: |
|---|---|
| March 30, 2021 ..... | 1:00 p.m. to 4:00 p.m. EST. |

The meeting is open to the public. Registration is required at *https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=eac2c7ae95c9a6ca78f36d73e42850fe1.* Once registered, there is no password for this event. Each registrant will be sent a link for their attendance to this virtual meeting. Only the registrant of record may use the meeting link.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters related to: The need of Veterans' families, caregivers, and survivors across all generations, relationships, and Veterans status; the use of VA care, benefits and memorial services by Veterans' families, caregivers, and survivors, and opportunities for improvements to the experience using such services; VA

policies, regulations, and administrative requirements related to the transition of Servicemembers from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers, and survivors; and factors that influence access to, quality of, and accountability for services, benefits and memorial services for Veterans' families, caregivers, and survivors.

On March 30, 2021, the agenda will include opening remarks from the Committee Chair and the Chief Veterans Experience Officer. There will be presentations from VA program offices on the responses to the Committee's Recommendations, COVID Vaccination Plans, MISSION Act Expansion and Legacy Participants and a discussion on Caregiver and Survivor Transitions Over Time.

Individuals wishing to share information with the Committee should contact the VEO Federal Advisory Committee Team at *VEOFACA@va.gov* to submit a 1–2 page summary of their comments for inclusion in the official meeting record before March 29, 2021 at 5:00pm (EST). Due to the time limitations of virtual meetings, public comments will be submitted prior to the meeting and distributed to the Committee before the designated meeting time on March 30, 2021.

Any member of the public seeking additional information should contact Betty Moseley Brown (Designated Federal Official) at *Betty.MoseleyBrown@va.gov* or 210–392–2505.

Dated: March 2, 2021.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2021–04617 Filed 3–4–21; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 86 Friday,

No. 42 March 5, 2021


Part II

## Securities and Exchange Commission

17 CFR Part 275 and 279

Investment Adviser Marketing; Final Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 275 and 279**

**[Release No. IA–5653; File No. S7–21–19]**

**RIN 3235–AM08**

## Investment Adviser Marketing

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the ''Commission'' or the ''SEC'') is adopting amendments under the Investment Advisers Act of 1940 (the ''Advisers Act'' or the ''Act'') to update rules that govern investment adviser marketing. The amendments will create a merged rule that will replace both the current advertising and cash solicitation rules. These amendments reflect market developments and regulatory changes since the advertising rule's adoption in 1961 and the cash solicitation rule's adoption in 1979. The Commission is also adopting amendments to Form ADV to provide the Commission with additional information about advisers' marketing practices. Finally, the Commission is adopting amendments to the books and records rule under the Advisers Act.

**DATES:**

*Effective date:* This rule is effective May 4, 2021.

*Compliance dates:* The applicable compliance dates are discussed in section II.K.

**FOR FURTHER INFORMATION CONTACT:** Juliet Han, Emily Rowland, Aaron Russ, or Christine Schleppegrell, Senior Counsels; Thoreau Bartmann or Melissa Roverts Harke, Senior Special Counsels; or Melissa Gainor, Assistant Director, at (202) 551–6787 or *IM-Rules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to 17 CFR 275.206(4)–1 (rule 206(4)–1) and 17 CFR 275.204–2 (rule 204–2) under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*],[1] and amendments to 17 CFR 279.1 (Form ADV) under the Advisers Act. The Commission is rescinding 17 CFR 275.206(4)–3 (rule 206(4)–3) under the Advisers Act.

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## I. Introduction

We are adopting an amended rule, rule 206(4)–1, under the Advisers Act, which addresses advisers marketing their services to clients and investors (the ''marketing rule''). The marketing rule amends existing rule 206(4)–1 (the ''advertising rule''), which we adopted

[1] Unless otherwise noted, when we refer to the Advisers Act, or any section of the Advisers Act, we are referring to 15 U.S.C. 80b, at which the Advisers Act is codified. When we refer to rules under the Advisers Act, or any section of those rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275], in which these rules are published.

in 1961 to target advertising practices that the Commission believed were likely to be misleading.[2] The rule also replaces rule 206(4)–3 (the ''solicitation rule''), which we adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest.[3] We have not substantively updated either rule since adoption.[4] In the decades since the adoption of both rules, however, advertising and referral practices have evolved. Simultaneously, the technology used for communications has advanced, the expectations of investors shopping for advisory services have changed, and the profiles of the investment advisory industry have diversified.

Our marketing rule recognizes these changes and our experience administering the advertising and solicitation rules. Accordingly, the rule contains principles-based provisions designed to accommodate the continual evolution and interplay of technology and advice. The rule also contains tailored restrictions and requirements for certain types of advertisements, such as performance advertising, testimonials and endorsements, and third-party ratings. Compensated testimonials and endorsements, which include traditional referral and solicitation activity, will be subject to disqualification provisions. We believe the final marketing rule will allow advisers to provide existing and prospective investors with useful information as they choose among investment advisers and advisory services, subject to conditions that are reasonably designed to prevent fraud.

Finally, we are adopting related amendments to Form ADV that are designed to provide the Commission with additional information about advisers' marketing practices, and related amendments to the Advisers Act books and records rule, rule 204–2.

*Advertising and Solicitation Rules and Proposed Amendments*

Advertisements can provide existing and prospective investors with useful information as they contemplate whether to utilize and pay for investment advisory services, whether to approach particular investment advisers, and how to choose among their available options. At the same time, advertisements present risks of misleading investors because an investment adviser's interest in attracting investors may conflict with the investors' interests, and the adviser is in control of the design, content, format, media, timing, and placement of its advertisements. As a consequence, advertisements may mislead existing and prospective investors about the advisory services they will receive, including indirectly through the services provided to private funds.[5] The advertising rule was designed to address the potential harm to investors from misleading advertisements.

Advisers also attract investors by compensating individuals or firms to solicit new investors. Some investment advisers directly employ individuals to solicit new investors on their behalf, and some investment advisers arrange for related entities or third parties, such as broker-dealers, to solicit new investors. The person or entity compensated has a financial incentive to recommend the adviser to the investor.[6] Without appropriate disclosure, this compensation creates a risk that an investor would mistakenly view the recommendation as being an unbiased opinion about the adviser's ability to manage the investor's assets and would rely on that recommendation more than the investor would if the investor knew of the incentive. The solicitation rule was designed to help expose to clients the conflicts of interest posed by cash compensation.

The concerns that motivated the Commission to adopt the advertising and solicitation rules still exist today, but investment adviser marketing has evolved with advances in technology. In the decades since the adoption of both the advertising and solicitation rules, the use of the internet, mobile applications, and social media has become an integral part of business communications. Consumers today often rely on these forms of communication to obtain information, including reviews and referrals, when considering buying goods and services. Advisers and third parties also rely on these same types of outlets to attract and refer potential customers.

The nature and profiles of the investment advisory industry and investors seeking those advisory services have also changed since the Commission adopted the advertising and solicitation rules. Some investors today rely on digital investment advisory programs, sometimes referred to as ''robo-advisers,'' for investment advice, which is provided exclusively through electronic platforms using algorithmic-based programs. In addition, passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') required many investment advisers to private funds that were previously exempt from registration to register with the Commission and become subject to additional provisions of the Advisers Act and the rules thereunder. Private funds and their advisers often hire promoters to obtain investors in the funds. Referral practices also have expanded to include, for example, various types of compensation, including non-cash compensation, in referral arrangements.

In light of these developments, we proposed amendments to the advertising rule to: (i) Modify the definition of ''advertisement'' to be more ''evergreen'' in light of ever-changing technology; (ii) replace four *per se* prohibitions with general prohibitions of certain advertising practices applicable to all advertisements; (iii) provide certain restrictions and conditions on testimonials, endorsements, and third-party ratings; and (iv) include tailored requirements for the presentation of performance results, based on an advertisement's intended audience.[7]

[2] Advertisements by Investment Advisers, Release No. IA–121 (Nov. 1, 1961) [26 FR 10548 (Nov. 9, 1961)] (''Advertising Rule Adopting Release'').

[3] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Release No. 688 (July 12, 1979) [44 FR 42126 (Jul 18, 1979)] (''1979 Adopting Release'').

[4] The advertising rule has been amended once, when the Commission revised the introductory text of paragraph (a) as part of a broader amendment of several rules under the Advisers Act to reflect changes made by the National Securities Market Improvement Act of 1996. Rules Implementing Amendments to the Investment Advisers Act of 1940, Release No. IA–1633 (May 15, 1997) [62 FR 28112, 28135 (May 22, 1997)] (''Release 1633''). We have not amended the solicitation rule since adoption.

[5] The final rule covers marketing activities by investment advisers to clients and prospective clients as well as investors and prospective investors in private funds that those advisers manage. *See* 15 U.S.C. 80b–2(a)(29) (defining a ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act''). Unless we specify otherwise, for purposes of this release, we refer to any of these persons generally as ''investors,'' and we refer specifically to investors in private funds managed by those advisers as ''private fund investors.''

[6] While we traditionally referred to those who engaged in compensated solicitation activity under the current solicitation rule as ''solicitors,'' we use the term ''promoter'' in this release to refer to a person providing a testimonial or endorsement, whether compensated or uncompensated. We also use the term ''provider'' at times when discussing a person providing an uncompensated testimonial or endorsement.

[7] *See* Investment Adviser Advertisements; Compensation for Solicitations, Release No. IA–5407 (Nov. 4, 2019) [84 FR 67518 (Dec. 10, 2019)] (''2019 Proposing Release'').

The proposed rule also would have required internal review and approval of most advertisements. Finally, we proposed amendments requiring each adviser to report additional information regarding its advertising practices in its Form ADV.

Additionally, we proposed amendments to the solicitation rule to: (i) Expand the rule to cover solicitation arrangements involving all forms of compensation, rather than only cash compensation; (ii) expand the rule to apply to the solicitation of current and prospective investors in any private fund, rather than only to ''clients'' (including prospective clients) of the investment adviser; (iii) eliminate requirements duplicative of other rules; (iv) include exceptions for *de minimis* payments and certain non-profit programs; and (v) expand the types of disciplinary events that would trigger the rule's disqualification provisions.

We received more than 90 comment letters on the proposal.[8] The Commission also received feedback flyers from individual investors on investment adviser marketing and from smaller advisers on the proposal's effects on small entities.[9] Commenters generally supported modernizing these rules and agreed with our general approach. Many commenters, however, expressed concern that several aspects of the proposed amendments to the advertising rule would increase an investment adviser's compliance burden.[10] For example, some commenters suggested removing the proposed internal pre-use review and approval requirement and narrowing the proposed definition of ''advertisement.'' [11] Others requested that we provide additional guidance on various topics, such as how the general prohibitions will apply in certain scenarios.[12] Commenters also expressed concern that the proposed amendments to the solicitation rule would significantly expand several aspects of the existing rule. For example, some commenters argued that the proposed definition of ''solicitor'' was too broad and suggested alternatives or limitations.[13] Others disagreed with the proposed expansion of the rule to include non-cash compensation and solicitations of private fund investors.[14] Commenters also recommended modifications to the disqualification provisions, such as aligning them with disqualification provisions in our other rules and limiting the scope of affiliate disqualification.[15]

Commenters generally supported our approach to permit testimonials and endorsements;[16] however, they highlighted the difficulty in assessing when compensated testimonials and endorsements under the proposed advertising rule would also trigger the application of the proposed solicitation rule.[17] Commenters argued that applying both rules to the same conduct is duplicative and burdensome.[18] Some commenters suggested that we regulate endorsements and testimonials only under the advertising rule,[19] whereas others suggested various ways to limit the conduct that would be subject to both rules.[20]

*Merged Marketing Rule*

After considering comments, we are adopting a rule with several modifications.[21] We believe it is appropriate to regulate investment adviser advertising and solicitation activity through a single rule: The marketing rule. This approach is designed to balance the Commission's goals of protecting investors from misleading advertisements and solicitations, while accommodating current marketing practices and their continued evolution.

- The final marketing rule will include an expanded definition of ''advertisement,'' relative to the current advertising rule, that will encompass an investment adviser's marketing activity for investment advisory services with regard to securities. We have determined not to expand the definition of advertisement to include communications addressed to one person as proposed, and instead will retain the current rule's exclusion of one-on-one communications from the definition, except with regard to compensated testimonials and endorsements and certain communications that include hypothetical performance information.[22] In addition, the definition will not include communications designed to retain existing investors. The final definition also will include exceptions for extemporaneous, live, oral communications; and information contained in a statutory or regulatory notice, filing, or other required communication.
- Largely as proposed, the final rule will apply to certain communications sent to clients and private fund investors, but will not apply to advertisements about registered investment companies or business development companies.
- A set of seven principles-based general prohibitions will apply to all advertisements. These are drawn from historic anti-fraud principles under the Federal securities laws and are tailored specifically to the type of communications that are within the scope of the rule.
- The final rule will permit an adviser's advertisement to include testimonials and endorsements, subject generally to the following conditions: Required disclosures; adviser oversight and compliance, including a written

[8] The comment letters on the 2019 Proposing Release (File No. S7–21–19) are available at *https://www.sec.gov/comments/s7-21-19/s72119.htm.*

[9] The feedback forms are available in the comment file at *https://www.sec.gov/comments/s7-21-19/s72119.htm.*

[10] *See, e.g.,* Comment Letter of Wellington Management Company LLP (Feb. 10, 2020) (''Wellington Comment Letter''); Comment Letter of Fidelity Management Research Company LLC (Feb. 10, 2020) (''Fidelity Comment Letter'');

[11] *See, e.g.,* Comment Letter of Investment Adviser Association (Feb. 10, 2020) (''IAA Comment Letter''); Comment Letter of the National Society of Compliance Professionals (Feb. 7, 2020) (''NSCP Comment Letter'').

[12] *See, e.g.,* Comment Letter of LinkedIn Corporation (Feb. 10, 2020) (''LinkedIn Comment Letter''); Comment Letter of the North American Securities Administrators Association (NASAA) (Feb. 10, 2020) (''NASAA Comment Letter'').

[13] *See, e.g.,* Comment Letter of Financial Services Institute (Feb. 12, 2020) (''FSI Comment Letter''); Comment Letter of SIFMA Asset Management Group on proposed solicitation rule (Feb. 10, 2020) (''SIFMA AMG Comment Letter I'').

[14] *See, e.g.,* Comment Letter of Fried, Frank, Harris, Shriver & Jacobson LLP (Feb. 10, 2020) (''Fried Frank Comment Letter''); Comment Letter of Sidley Austin LLP (Feb. 10, 2020) (''Sidley Austin Comment Letter'').

[15] *See, e.g.,* Comment Letter of Credit Suisse Securities (USA) LLC (Feb. 10, 2020) (''Credit Suisse Comment Letter''); SIFMA AMG Comment Letter I.

[16] *See, e.g.,* Comment Letter of the Small Business Investor Alliance (Feb. 7, 2020) (''SBIA Comment Letter''); Comment Letter of the Consumer Federation of America (Feb. 10, 2020) (''Consumer Federation Comment Letter'').

[17] *See, e.g.,* Comment Letter of SIFMA Asset Management Group on proposed advertising rule (Feb. 10, 2020) (''SIFMA AMG Comment Letter II''); Comment Letter of Joseph H. Nesler (Jan. 15, 2020) (''Nesler Comment Letter'').

[18] *See e.g.,* FSI Comment Letter; SIFMA AMG Comment Letter II.

[19] *See, e.g.,* IAA Comment Letter; SIFMA AMG Comment Letter II; Comment Letter of Mercer Advisors (Feb. 10, 2020) (''Mercer Comment Letter''). *See also* FSI Comment Letter.

[20] *See e.g.,* SIFMA AMG Comment Letter II; FSI Comment Letter; IAA Comment Letter; Comment Letter of the Money Management Institute (Feb. 10, 2020) (''MMI Comment Letter''); Nesler Comment Letter.

[21] The final rule will apply to all investment advisers registered, or required to be registered, with the Commission. Like the proposal, the final rule will not apply to advisers that are not required to register as investment advisers with the Commission, such as exempt reporting advisers or state-registered advisers.

[22] Hypothetical performance information that is provided in response to an unsolicited investor request or to a private fund investor in a one-on-one communication is excluded from the first prong of the definition of advertisement.

agreement for certain promoters; and, in some cases, disqualification provisions. We are adopting partial exemptions for *de minimis* compensation, affiliated personnel, registered broker-dealers, and certain persons to the extent they are covered by rule 506(d) of Regulation D under the Securities Act with respect to a securities offering.

- An adviser's advertisement may include a third-party rating, if the adviser forms a reasonable belief that the third-party rating clearly and prominently discloses certain information.
- The final rule will apply to performance advertising and will require presentation of net performance information whenever gross performance is presented, and performance data over specific periods. In addition, the final rule will impose requirements on advisers that display related performance, extracted performance, hypothetical performance, and—in a change from the proposal—predecessor performance. We are not adopting, however, the proposed separate requirements for performance advertising for retail and non-retail investors.
- We are amending the recordkeeping rule and Form ADV to reflect the final rule and enhance the data available to support our staff's enforcement and examination functions.
- In a change from the proposal, the final rule will not require investment advisers to review and approve their advertisements prior to dissemination.
- Finally, certain staff no-action letters will be withdrawn in connection with the final rule as those positions are either incorporated into the final rule or will no longer apply.

## II. Discussion

### *A. Scope of the Rule: Definition of ''Advertisement''*

#### 1. Overview

Under the final marketing rule, the definition of an advertisement includes two prongs.[23] The first prong includes any direct or indirect communication an investment adviser makes that: (i) Offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser (''private fund investors''), or (ii) offers new investment advisory services with regard to securities to current clients or private fund investors.[24] This prong will capture traditional advertising, and will not include one-on-one communications, unless the communication includes hypothetical performance information that is not provided: (i) In response to an unsolicited investor request or (ii) to a private fund investor. It also excludes (i) extemporaneous, live, oral communications; and (ii) information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.[25]

The new second prong will cover compensated testimonials and endorsements, which will include a similar scope of activity as traditional solicitations under the current solicitation rule.[26] This prong will include oral communications and one-on-one communications to capture traditional one-on-one solicitation activity, in addition to solicitations for non-cash compensation. It will exclude certain information contained in a statutory or regulatory notice, filing, or other required communication.[27]

#### 2. Definition of Advertisement: Communications Other Than Compensated Testimonials and Endorsements

Proposed rule 206(4)–1(e)(1) would have defined an advertisement as any communication, disseminated by any means, by or on behalf of an investment adviser, that offers or promotes the investment adviser's investment advisory services or that seeks to obtain or retain one or more investment advisory clients or private fund investors, subject to certain enumerated exclusions. Although some commenters supported the proposed definition,[28] most commenters stated that it was overly broad.[29] Some commenters stated that the proposed definition would chill adviser communications to existing investors, increase compliance burdens for advisers, and complicate communications with various third parties.[30]

After considering comments, we are making several modifications to hone the scope of the rule to the communications that have a greater risk of misleading investors, ease compliance burdens that commenters suggested would result from the proposed rule's scope, and facilitate communications with existing investors.

#### a. Specific Provisions

In a textual (but not substantive) change from the proposal, the final rule will not include the phrase ''disseminated by any means'' and instead will reference any direct or indirect communication the adviser makes. We believe these two formulations carry the same meaning, but understand from commenters that the phrase ''direct or indirect'' is more familiar to advisers. This reference to direct or indirect communications will replace the current advertising rule's requirement that an advertisement be a ''written'' communication or a notice or other announcement ''by radio or television.'' We are deleting references in the current advertising rule to specific types of communications to ensure that the final rule reflects modern communication methods, rather than the methods that were most common when the Commission adopted the current rule (*e.g.,* newspapers, television, and radio). Commenters generally did not oppose omitting the current rule's references to specific methods of communication and supported such modernization of the current rule.[31]

This revision will expand the scope of the current rule to encompass all offers of an investment adviser's investment advisory services with regard to securities regardless of how they are disseminated, with the limited exceptions discussed below. An adviser may disseminate such communications through emails, text messages, instant messages, electronic presentations, videos, films, podcasts, digital audio or video files, blogs, billboards, and all manner of social media, as well as by paper, including in newspapers, magazines, and the mail. We recognize that electronic media (including social media and other internet communications) and mobile communications play a significant role in current advertising practices. We also believe this revision will help the

[23] *See* final rule 206(4)–1(e)(1)(i) and (ii).

[24] *See* final rule 206(4)–1(e)(1)(i).

[25] *See* final rule 206(4)–1(e)(1)(i)(A) and (B).

[26] *See* final rule 206(4)–1(e)(1)(ii). As discussed below, uncompensated testimonials and endorsements that are included in certain adviser communications would meet the first prong of the definition of advertisement. *See infra* ''Adoption and entanglement'' section.

[27] *See* final rule 206(4)–1(e)(1)(ii).

[28] *See, e.g.,* SBIA Comment Letter; Consumer Federation Comment Letter; Comment Letter of the Institutional Limited Partners Association (Feb. 10, 2020) (''ILPA Comment Letter'').

[29] *See, e.g.,* Wellington Comment Letter; Pickard Djinis Comment Letter; Comment Letter of Managed Funds Association and Alternative Investment Management Association (Feb. 10, 2020) (''MFA/AIMA Comment Letter I'').

[30] *See, e.g.,* Fidelity Comment Letter; NSCP Comment Letter; IAA Comment Letter.

[31] *See, e.g.,* NYC Bar Comment Letter; Comment Letter of the Financial Planning Association (Feb. 10, 2020) (''FPA Comment Letter'').

definition remain evergreen in the face of evolving technology and methods of communication.

i. Any Direct or Indirect Communication an Investment Adviser Makes

The first prong of the final marketing rule's definition of ''advertisement'' includes an adviser's direct or indirect communications. In addition to communicating directly with prospective investors, we understand that investment advisers often provide intermediaries, such as consultants, other advisers (*e.g.,* in a fund-of-funds or feeder funds structure), and promoters, with advertisements for dissemination. Those advertisements are indirect communications because they are statements provided by the adviser for dissemination by a third party. This aspect of the definition also will capture certain communications distributed by an adviser that incorporate statements or other content prepared by a third party.[32]

The final rule text reflects a change from the proposal, which would have applied to any communications ''by or on behalf of'' an adviser.[33] Commenters generally suggested that we remove the ''on behalf of'' clause from the definition, citing concerns that advisers would not be able to collaborate with third parties to prepare and disseminate advertising materials and that it would stifle communications between advisers and certain third parties.[34] Certain commenters requested safe harbors for communications with the press and removal of profane or illegal materials.[35] Commenters also requested clarification on how the rule would apply to funds-of-funds, model providers, solicitors, and employee use of social media.[36]

We believe communications that investment advisers use to offer their advisory services have an equal potential to mislead—and should be subject to the rule—regardless of whether the adviser communicates directly or indirectly through a third party, such as a consultant, intermediary, or related person.[37] Likewise, an adviser should not be able to avoid application of the rule when it incorporates third-party content into its communications.[38] To address commenters' concerns about the clarity of the standard, however, we replaced ''on behalf of'' with ''directly or indirectly.'' Our view is that these phrases largely have the same meaning, but that ''directly or indirectly'' is more commonly used, broadly understood, and consistent with the language in the current rule. In addition, we believe that the phrase ''direct or indirect communication an investment adviser makes'' better focuses on an adviser's participation in making a particular communication subject to the rule.

Whether a particular communication is a communication made by the adviser is a facts and circumstances determination. Where the adviser has participated in the creation or dissemination of an advertisement, or where an adviser has authorized a communication, the communication would be a communication of the adviser. For example, if an adviser provides marketing material to a third party for dissemination to potential investors, the communication is a communication made by the adviser. In addition, we would generally view any advertisement about the adviser that is distributed and/or prepared by a related person as an indirect communication by the adviser, and thus subject to the final rule.[39] Although the final marketing rule will not require an adviser to oversee all activities of a third party, the adviser is responsible for ensuring that its advertisements comply with the rule, regardless of who creates or disseminates them.

An adviser might collaborate with a third party to prepare marketing materials in other circumstances that would not constitute dissemination by an adviser. If an adviser provides comments on a marketing piece, but a third party does not accept the adviser's comments or the third party makes unauthorized modifications, the adviser will not be responsible for the third party's subsequent modifications that were made independently of the adviser and that the adviser did not approve.[40] This analysis would be based on the facts and circumstances. Formal authorization of dissemination, or lack thereof, by the adviser is not dispositive, although it would be considered part of the analysis.

Commenters sought clarification on how the definition of ''advertisement'' would apply in the fund-of-funds and master-feeder contexts.[41] If an adviser to an underlying fund provides marketing materials to the adviser of a fund-of-funds (or a feeder fund) and the adviser to the fund-of-funds (or a feeder fund) provides those materials to investors, the underlying fund adviser would be responsible for the material it prepared or authorized for distribution.[42] The underlying fund adviser would not be responsible for modifications the adviser of the fund-of-funds made to the underlying fund adviser's original advertisement if the underlying fund adviser did not approve the adviser's edits. Similarly, a third-party model provider would not be responsible for modifications the end-user adviser made to the third-party model used in an advertisement if done without the model provider's involvement or authorization.

Adoption and Entanglement

Depending on the particular facts and circumstances, third-party information also may be attributable to an adviser under the first prong of the final rule. For example, an adviser may distribute information generated by a third party or a third party could include information about an adviser's investment advisory services in the third party's materials. In these scenarios, whether the third-party information is attributable to the adviser

[32] *See infra* ''Adoption and entanglement'' section.

[33] *See* proposed rule 206(4)–1(e)(1).

[34] *See, e.g.,* SIFMA AMG Comment Letter II; FSI Comment Letter; Comment Letter of the CFA Institute (Feb. 24, 2020) (''CFA Institute Comment Letter''); Comment Letter of ICE Data Pricing & Reference Data, LLC (Feb. 10, 2020) (''ICE Comment Letter'').

[35] *See, e.g.,* LinkedIn Comment Letter; Comment Letter of Resolute Investment Managers (Feb. 10, 2020) (''Resolute Comment Letter''); IAA Comment Letter.

[36] *See, e.g.,* Comment Letter of the American Investment Council (Feb. 10, 2020) (''AIC Comment Letter''); Nesler Comment Letter; SIFMA AMG Comment Letter II; CFA Institute Comment Letter.

[37] Section 208 of the Advisers Act states that ''[i]t shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly . . .'' *See, e.g.,* In the Matter of Profitek, Inc., Release No. IA–1764 (Sept. 29, 1998) (settled order) (The Commission brought an enforcement action against an investment adviser, asserting that it directly or indirectly distributed materially false and misleading advertisements, including by submitting performance information in questionnaires submitted to online databases that were made available to subscribers nationwide and by providing misleading performance information to a newspaper that reported the performance in an article.).

[38] *See infra* ''Adoption and entanglement'' section.

[39] An adviser's ''related person'' is defined in Form ADV's Glossary of Terms as ''[a]ny *advisory affiliate* and any *person* that is under common *control* with [the adviser's] firm.'' Italicized terms are defined in the Form ADV Glossary. *See* Form ADV Glossary.

[40] However, the adviser will remain responsible for the accuracy of the marketing material provided to and disseminated by the third party even if the third party makes formatting changes that do not affect the content of that marketing material or prominence of particular disclosures therein.

[41] *See, e.g.,* AIC Comment Letter; Comment Letter of JG Advisory Services, LLC (Jan. 9, 2020) (''JG Advisory Comment Letter'').

[42] In this discussion, the acquiring fund adviser (or the adviser to, or sponsor of, a feeder fund in a master-feeder structure) generally would be treated as an intermediary and not as an investor in the underlying fund (or the master fund in a master-feeder structure).

will require an analysis of the facts and circumstances to determine (i) whether the adviser has explicitly or implicitly endorsed or approved the information after its publication (adoption) or (ii) the extent to which the adviser has involved itself in the preparation of the information (entanglement).[43]

An adviser ''adopts'' third-party information when it explicitly or implicitly endorses or approves the information.[44] For example, if an adviser incorporates information it receives from a third party into its performance advertising, the adviser has adopted the third-party content, and the third-party content will be attributed to the adviser.[45] An adviser is liable for such third-party content under the marketing rule just as it would be liable for content it produced itself.[46] In addition, an adviser may have ''entangled'' itself in a third-party communication if the adviser involves itself in the third party's preparation of the information.[47]

Nevertheless, we would not view an adviser's edits to an existing third-party communication to result in attribution of that communication to the adviser if the adviser edits a third party's communication based on pre-established, objective criteria (*i.e.,* editing to remove profanity, defamatory or offensive statements, threatening language, materials that contain viruses or other harmful components, spam, unlawful content, or materials that infringe on intellectual property rights, or editing to correct a factual error) that are documented in the adviser's policies and procedures and that are not designed to favor or disfavor the adviser.[48] In these circumstances, we would not view the adviser as endorsing or approving the remaining content by virtue of such limited editing.

Guidance on Social Media

Questions about whether a communication is attributable to an adviser may commonly arise in the context of an adviser's use of websites or other social media. For example, an adviser might include a hyperlink in an advertisement to an independent web page on which third-party content sits. An adviser should consider the adoption and entanglement concepts discussed above to determine whether the hyperlinked third-party content would be attributed to the adviser.[49] At the same time, an adviser's hyperlink to third-party content that the adviser knows or has reason to know contains an untrue statement of material fact or materially misleading information would also be fraudulent or deceptive under section 206 of the Act and other applicable anti-fraud provisions.

Whether content posted by third parties on an adviser's own website or social media page would be attributed to the investment adviser also depends on the facts and circumstances surrounding the adviser's involvement.[50] For example, permitting all third parties to post public commentary to the adviser's website or social media page would not, by itself, render such content attributable to the adviser, so long as the adviser does not selectively delete or alter the comments or their presentation and is not involved in the preparation of the content.[51] We believe such treatment of third-party content on the adviser's own website or social media page is appropriate even if the adviser has the ability to influence the commentary but does not exercise this authority. For example, if the social media platform allows the investment adviser to sort the third-party content in such a way that more favorable content appears more prominently, but the investment adviser does not actually do such sorting, then the ability to sort content would not, by itself, render such content attributable to the adviser. In addition, if an adviser merely permits the use of ''like,'' ''share,'' or ''endorse'' features on a third-party website or social media platform, we would not interpret the adviser's permission as implicating the final rule.

Conversely, if the investment adviser takes affirmative steps to involve itself in the preparation or presentation of the comments, to endorse or approve the comments, or to edit posted comments, those comments would be attributed to the adviser. This would apply to the affirmative steps an adviser takes both on its own website or social media pages, as well as on third-party websites. For example, if an adviser substantively modifies the presentation of comments posted by others by deleting or suppressing negative comments or prioritizing the display of positive comments, then we would attribute the comments to the adviser (*i.e.,* the communication would be an indirect statement of the adviser) because the adviser would have modified third-party comments with the goal of marketing its advisory business. However, as discussed above, we would not view an adviser's merely editing profane, unlawful, or other such content according to a neutral pre-existing policy as the adviser adopting the content.

Some commenters sought assurances that the definition of advertisement would not cover an adviser's associated persons' activity on their personal social media accounts.[52] We have concerns that, under certain circumstances, it could be difficult for an investor to differentiate a communication of the associated person in his/her personal capacity from a communication the associated person made for the adviser. With respect to social media postings to associated persons' own accounts, it would be a facts and circumstances analysis relating to the adviser's supervision and compliance efforts. If the adviser adopts and implements policies and procedures reasonably designed to prevent the use of an associated person's social media accounts for marketing the adviser's advisory services, we generally would not view such communication as the adviser marketing its advisory

[43] *See* Interpretive Guidance on the Use of Company websites, Release No. IC–28351 (Aug. 1, 2008) [73 FR 45862 (Aug. 7, 2008)] (''2008 Release'') (''[W]hether third-party information is attributable to a company depends upon whether the company has: (1) involved itself in the preparation of the information, or (2) explicitly or implicitly endorsed or approved the information.''); Use of Electronic Media, Release No. 34–42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''2000 Release'') at nn.52, 54; Use of Electronic Media for Delivery Purposes, Release No. 34–36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (''1995 Release'').

[44] *See* 2008 Release, *supra* footnote 43.

[45] *See, e.g.,* In the Matter of BB&T Securities, LLC, Release No. IA–4506 (Aug. 25, 2016) (settled order) (The Commission brought an enforcement action against an SEC-registered investment adviser alleging that it negligently relied on a third party's materially inflated, and hypothetical and backtested, performance track record in preparing advertisements that the adviser sent to advisory clients and prospective clients.).

[46] *See infra* section II.B.

[47] *See* 2000 Release, *supra* footnote 43 (''[L]iability under the 'entanglement' theory would depend upon an issuer's level of pre-publication involvement in the preparation of the information.'').

[48] For example, an adviser could not have a policy to remove only negative comments about the adviser.

[49] We previously stated that an adviser should consider the application of rule 206(4)–1, including the existing prohibition of testimonials, before including hyperlinks to third-party websites on its website or in its electronic communications. *See* 2008 Release, *supra* footnote 43.

[50] Other content that offers or promotes the adviser's services on an adviser's own website or social media page would likely meet the definition of ''advertisement'' under the final rule.

[51] *See supra* ''Adoption and entanglement'' section (discussing an adviser's ability to edit third-party material based on objective criteria).

[52] *See, e.g.,* SIFMA AMG Comment Letter II; LinkedIn Comment Letter; IAA Comment Letter. We believe that our modifications to the first prong of the definition of advertisement also will alleviate commenters' concerns as there are now fewer scenarios in which communications on employee social media accounts would meet the definition of advertisement.

services.[53] To achieve effective supervision and compliance, an adviser may consider also prohibiting such communications, conducting periodic training, obtaining attestations, and periodically reviewing content that is publicly available on associated persons' social media accounts.

ii. To More Than One Person

Consistent with the current rule's exclusion of one-on-one communications, the first prong of the final definition of ''advertisement'' generally does not include communications to one person. While our proposed rule would have treated communications directed to ''one or more'' persons as advertisements, commenters generally opposed this expansion.[54] In particular, commenters argued that subjecting one-on-one communications to the requirements of the proposed rule would create untenable burdens given the proposed review and approval obligation (including enhanced recordkeeping requirements).[55] Commenters also stated that it would chill adviser/investor communications.[56] According to commenters, scoping a one-on-one communication into the rule would require advisers to review each communication to determine whether it is an advertisement, which could prevent an adviser from providing timely information to investors and satisfying its fiduciary obligations.[57] We received comments that communications to existing investors are already subject to the anti-fraud provisions of the Advisers Act, and therefore communications to existing investors need not be subject to the final rule.[58]

After considering the comments, we have determined to exclude one-on-one communications from the first prong of the definition and retain the ''more than one'' language in the current advertising rule, unless such communications include hypothetical performance information that is not provided: (i) In response to an unsolicited investor request or (ii) to a private fund investor. We have made this change to avoid the possibility that the rule would impede typical communications between advisers and their existing and prospective investors. An adviser might have been dis-incentivized to communicate regularly with its investors if it believed it would have to analyze every communication for compliance with the proposed rule.[59]

Because we are excluding one-on-one communications from the first prong of the definition of advertisement under most circumstances, we are modifying the proposed exclusion for an adviser's responses to unsolicited requests.[60] Although commenters generally supported the exclusion and recommended expanding it,[61] we believe excluding most one-on-one communications addresses commenter concerns in a more comprehensive manner than the unsolicited request exclusion would have addressed them. The definition will exclude an adviser's responses to an unsolicited investor request for hypothetical performance information, as well as hypothetical performance information provided to a private fund investor in a one-on-one communication, as discussed below. Unless subject to this or another exclusion, the definition of advertisement will capture communications that include hypothetical performance information even in a one-on-one communication.[62]

We also recognize that advisers have one-on-one interactions with prospective investors and that prospective investors may ask questions of an adviser or ask for additional information. In adopting the current advertising rule, the Commission limited the definition of ''advertisement'' due to concerns that a broad definition could encompass even ''face to face conversations between an investment counsel and his prospective client.''[63] The Commission stated that it would not include a ''personal conversation'' with a client or prospective client.[64] We believe that the same concerns that influenced the Commission's prior approach continue to exist. We also believe that the remaining provisions of the definition, as well as other provisions of the Federal securities laws, are adequate to satisfy our investor protection goals with respect to communications directed only to a single individual or entity.[65]

The one-on-one exclusion in the definition's first prong applies regardless of whether the adviser makes the communication to a natural person with an account or multiple natural persons representing a single entity or account.[66] The exclusion applies to a single adviser and a single investor. For example, if an adviser's prospective investor is an entity, the exclusion permits the adviser to provide communications to multiple natural persons employed by or owning the entity without those communications being subject to the rule. For purposes of this exclusion, we also interpret the term ''person'' to mean one or more investors that share the same household. For example, a communication to a married couple that shares the same household would qualify for the one-on-one exclusion.[67]

Some commenters advocated that we increase the ''more than one'' threshold from the current rule to communications with ''more than ten'' or ''more than 25'' persons.[68] They argued that such a change would reduce compliance costs and better align with traditional concepts of advertising.[69] We decline to make this change. The

[53] An associated person who, notwithstanding these policies and procedures, engages in communications inconsistent with the rule may, depending on the facts and circumstances, be held responsible for violations of the rule.

[54] *See, e.g.,* IAA Comment Letter; AICPA Comment Letter.

[55] *See, e.g.,* Comment Letter of Commonwealth Financial Network (Feb. 10, 2020) (''Commonwealth Comment Letter'') (stating that the lack of complete overlap with FINRA rules would make compliance especially burdensome for dual registrants); Comment Letter of the National Regulatory Services (Feb. 10, 2020) (''NRS Comment Letter''). Commenters also noted that advisers have adopted long-standing practices in reliance on the existing exclusion of one-on-one communications. *See, e.g.,* Comment Letter of the New York City Bar (Feb. 10, 2020) (''NYC Bar Comment Letter'').

[56] *See, e.g.,* IAA Comment Letter (stating that the proposed rule ''would blur the line between client servicing and marketing''); Wellington Comment Letter; Fidelity Comment Letter; MFA/AIMA Comment Letter I.

[57] *See, e.g.,* CFA Institute Comment Letter; Comment Letter of the Council of Institutional Investors (Feb. 11, 2020) (''CII Comment Letter'').

[58] *See, e.g.,* SIFMA AMG Comment Letter II.

[59] As discussed below, we also have eliminated the element of the proposed rule that would apply to communications to retain investors.

[60] *See* proposed rule 206(4)–1(e)(1)(ii). We proposed to exclude from the definition of ''advertisement'' any communication by an investment adviser ''that does no more than respond to an unsolicited request'' for ''information specified in such request about the investment adviser or its services'' other than a communication to a retail person that includes performance results or a communication that includes hypothetical performance.

[61] *See, e.g.,* Wellington Comment Letter; MFA/AIMA Comment Letter I; IAA Comment Letter.

[62] *See* final rule 206(4)–1(e)(1)(i)(A)–(C).

[63] *See* Prohibited Advertisements, Release No. IA–119 (Aug. 8, 1961) [26 FR 7552, 7553 (Nov. 15, 1961)].

[64] *Id.*

[65] *See, e.g.,* section 206 of the Act; rule 206(4)–8 under the Act.

[66] *See, e.g.,* MFA/AIMA Comment Letter I; IAA Comment Letter (stating that the Commission should ''make clear in the adopting release that the same communication to multiple natural persons representing a single institution or client/account counts as a communication to a single person'').

[67] *See, e.g.,* rule 30e–1(f) under the Investment Company Act.

[68] *See, e.g.,* IAA Comment Letter (suggesting the more than 25 person threshold because FINRA rule 2210 uses this approach and stating that consistency would ease compliance burdens).

[69] *See, e.g.,* FPA Comment Letter.

exclusion from the first prong of the definition of advertisement for one-on-one communications will allow an adviser to engage in routine investor communications and have personal conversations with prospective investors, without subjecting those communications to the final marketing rule's requirements. However, we continue to believe that the final rule should cover typical marketing communications, even if sent to a limited number of persons. Creating a higher threshold, as suggested by commenters, may incentivize advisers to limit communications to just below the threshold number of persons, and may defeat the purposes of our final rule.

While the first prong of the final rule will generally not apply to communications to one person, changes in technology since the adoption of the existing rule permit advisers to create communications that appear to be personalized to single investors and are ''addressed to'' only one person, but are actually widely disseminated to multiple persons. While communications such as bulk emails or algorithm-based messages are nominally directed at or ''addressed to'' only one person, they are in fact widely disseminated to numerous investors and therefore would be subject to the final rule.[70] Similarly, customizing a template presentation or mass mailing by filling in the name of an investor and/or including other basic information about the investor would not result in a one-on-one communication.

Likewise, an adviser cannot use duplicate inserts in an otherwise customized communication in an effort to circumvent application of the rule.[71] For example, if an adviser maintains a database of performance information inserts or tables that it uses in otherwise customized investor communications, the adviser must treat the duplicated inserts as advertisements subject to the rule. Of course, if the adviser provides an existing investor with performance information pertaining to the investor's account, the rule would not apply because this is a one-on-one communication.[72]

One commenter expressed concern that the public dissemination of a seemingly one-on-one communication could subject the communication to the final rule.[73] We believe that if, for example, an adviser responds to a request for proposal (''RFP'') from an entity and the entity subsequently makes such responses available to the public pursuant to a Freedom of Information Act request or other public disclosure requirements, this would not be an advertisement merely by virtue of the entity's disclosure.[74] An adviser should consider adopting compliance policies and procedures that are reasonably designed to determine whether a communication nominally directed to a single person is actually a communication to more than one person, or contains duplicated inserts as part of that communication. In these circumstances, the duplicated information is an advertisement because it is sent to more than one person and would not qualify for the exclusion.

Because of the specific concerns raised by hypothetical performance, hypothetical performance information would not qualify for the one-on-one exclusion unless provided in response to an unsolicited investor request or to a private fund investor.[75] Hypothetical performance included in all other one-on-one communications that offer investment advisory services with regard to securities must be presented in accordance with the requirements discussed below.

We proposed a similar approach for hypothetical performance provided in response to an unsolicited request under the proposed definition of advertisement.[76] Some commenters suggested that the Commission permit an adviser to provide hypothetical performance in response to unsolicited requests to eliminate the need to assess the requirements related to hypothetical performance.[77] These commenters stated that the need to assess these requirements would slow down the flow of information to investors, require investors to provide more information earlier in the diligence process, or limit the hypothetical performance information shared in response to such an unsolicited request. Some commenters stated that private fund investors often seek hypothetical performance information, particularly targets and projections, to evaluate private fund investments.[78] After considering these comments, we believe that, in most circumstances, the protections for hypothetical performance should be available to investors receiving communications that include offers of investment advisory services with regard to securities, to the extent such offers include hypothetical performance information. We believe our modifications to the first prong of the definition of advertisement and to the requirements for presenting hypothetical performance, discussed below, will reduce the associated compliance burdens for providing hypothetical performance information to investors and will, therefore, alleviate some of commenters' concerns.

However, where an investor affirmatively seeks hypothetical performance information from an investment adviser and the investment adviser has not directly or indirectly solicited the request, hypothetical performance information provided in response to the request will be excluded from the definition of advertisement under the final rule.[79] In the case of an unsolicited request, an investor seeks hypothetical performance information for the investor's own purposes, rather than responding to a communication disseminated by an adviser offering its investment advisory services with regard to securities. Similarly, where the hypothetical performance information is provided in a one-on-one communication to a private fund investor, we believe a private fund investor will have the ability and opportunity to ask questions and assess the limitations of this information. In these limited circumstances, we do not believe it is necessary to treat the hypothetical performance information

[70] *See, e.g.,* NSCP Comment Letter.

[71] The fact that there may be some similarities in the information provided in one-on-one communications, however, will not result in the application of the rule to those communications.

[72] In addition, the communication does not fall within the definition of advertisement because the purpose of the communication is not to offer services to a new investor or to provide new services to an existing investor. *See infra* section II.A.2.a.iv.

[73] *See* Resolute Comment Letter (seeking clarification on the treatment of ''account statements and similar reports intended for Non-Retail Persons, such as public entities, that are required to make such information publicly available''). If the entity is an existing investor of the adviser, communications to the entity would not be considered an advertisement unless the communications offer or promote new advisory products or services of the adviser.

[74] *See also supra* section II.A.2.a.i for a discussion of an adviser's direct or indirect communications.

[75] *See infra* section II.E.6. These communications would be eligible for the exclusions from the definition of advertisement for extemporaneous, live, oral communications and regulatory notices in final rule 206(4)–1(e)(1)(i)(A) and (B).

[76] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.2. (proposing that communications to any person that contain hypothetical performance would not qualify for the unsolicited request exclusion to the extent they contain such results); proposed rule 206(4)–1(e)(1)(ii)(B).

[77] *See* IAA Comment Letter; ILPA Comment Letter.

[78] *See* IAA Comment Letter; Comment Letter of Managed Funds Association and Alternative Investment Management Association (Sept. 11, 2020) (''MFA/AIMA Comment Letter III'').

[79] Any affirmative effort by the investment adviser intended or designed to induce an investor to request hypothetical performance information would render the request solicited and thus not eligible for this exclusion.

as an advertisement subject to the rule.[80]

iii. Offers Investment Advisory Services With Regard to Securities to Prospective Clients or Investors in a Private Fund Advised by the Investment Adviser

The marketing rule's definition of ''advertisement'' includes communications that offer the investment adviser's investment advisory services. As discussed in more detail below, we are implementing a number of changes from the proposal, which would have defined advertisements to include communications that offer or promote the investment adviser's investment advisory services or that seek to obtain or retain one or more investment advisory clients or investors in any pooled investment vehicle advised by the investment adviser.[81] First, we are limiting the application of this element of the definition to communications directed to prospective clients or prospective private fund investors, rather than existing clients or private fund investors to avoid an overbroad application of the rule. Accordingly, this aspect of the final rule will retain the current rule's scope.

Second, we also are not adopting the ''or promote'' wording from the proposed definition of advertisement. Commenters generally opposed including the term ''promote,'' suggesting that this term could expand the definition of ''advertisement'' to cover certain materials not subject to the current rule,[82] the text of which is limited to communications that ''offer'' advisory services.[83] As we indicated in the proposal, the ''offer or promote'' clause reflects the current rule's application and was designed to capture communications that are commonly considered advertisements.[84] We added the ''or promote'' wording to the proposed definition for clarity, but after considering comments we realize this wording may instead cause confusion. For example, commenters sought clarification that statements about an advisory firm's culture, philanthropy, or community activity would not fall within the definition of advertisement.[85] We did not intend for our proposed definition and the inclusion of the term ''promote'' to include such communications. Accordingly, the final rule will not include the term ''promote'' as it is our intent to retain the current rule's scope in this respect.[86]

Third, consistent with the current rule, we are limiting the application of the definition to offers about an investment adviser's investment advisory services *with regard to securities.* We were persuaded by commenters who urged us to retain the current rule's scope, arguing that expanding the definition to cover services that are not related to securities could result in an overbroad application of the rule.[87] Importantly, however, the anti-fraud provisions of the Act and related rules continue to apply to an adviser's advertisements and other communications about its other non-securities related services.[88]

Finally, the definition will not include communications that seek to obtain one or more investment advisory clients or investors in any pooled investment vehicle advised by the investment adviser. We determined that this clause was superfluous of the rest of the definition; we believe these communications are captured within an adviser's offer of investment advisory services with regard to securities to prospective investors in a private fund advised by the adviser.[89]

iv. Offers New Investment Advisory Services With Regard to Securities to Current Clients or Investors in a Private Fund Advised by the Investment Adviser

The proposed definition of ''advertisement'' included communications that seek ''to obtain or retain'' investors. Commenters generally stated that the ''or retain'' clause would unnecessarily include communications made in the ordinary course of an adviser providing services to current investors as all communications with current investors are, at least in part, designed to both service and retain investors.[90]

Several commenters asked us to confirm the scope of the definition as applied to communications with existing investors.[91] For example, some commenters suggested an exclusion for all communications with existing investors,[92] while others supported a more limited exclusion for routine investor communications.[93] Commenters generally agreed that the rule should treat communications with existing investors that offer new or additional advisory services as advertisements.[94] Commenters that supported a complete or partial exclusion for communications to existing investors stated that such communications are part of the advisory service and not advertisements.[95]

[80] The hypothetical performance information would be subject to the Advisers Act's anti-fraud provisions and rule 206(4)–8 under the Advisers Act.

[81] *See* proposed rule 206(4)–1(e)(1).

[82] *See, e.g.,* MFA/AIMA Comment Letter I; Comment Letter of Association for Corporate Growth (Feb. 10, 2020) (''ACG Comment Letter'').

[83] Under the current advertising rule, an ''advertisement'' includes any written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers ''any other investment advisory service with regard to securities.'' *See* current rule 206(4)–1.

[84] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.2.

[85] *See* SIFMA AMG Comment Letter II; FSI Comment Letter.

[86] *See SEC* v. *C.R. Richmond & Co.,* 565 F.2d 1101, 1105 (9th Cir. 1977) (''Investment advisory material which promotes advisory services for the purpose of inducing potential clients to subscribe to those services is advertising material within [the current rule].'').

[87] *See* NYC Bar Comment Letter; ACG Comment Letter.

[88] *See* section 206 of the Act; rule 206(4)–8 under the Act. *See also* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] (''Fiduciary Interpretation'') (stating that ''[t]he investment adviser's fiduciary duty is broad and applies to the entire adviser-client relationship.''), at n.17 (citing *SEC* v. *Lauer,* 2008 WL 4372896, at 24 (S.D. Fla. Sept. 24, 2008) '' 'Section 206 of the Advisers Act does not require that the activity be 'in the offer or sale of any' security or 'in connection with the purchase or sale of any security.' ' '').

[89] As discussed below, the definition of advertisement in the final rule also will not include communications designed to ''retain'' investors. *See infra* section II.A.2.a.iv.

[90] *See, e.g.,* Wellington Comment Letter; IAA Comment Letter; JG Advisory Comment Letter (stating that ''the rule should treat communications to existing investors differently from communications to prospective investors'').

[91] *See, e.g.,* SIFMA AMG Comment Letter II (discussing market commentary, investment outlooks, performance reviews); JG Advisory Comment Letter (seeking clarification on whether the proposed definition would scope in monthly or quarterly letters to existing investors where such letters discuss account performance and include market commentary).

[92] *See, e.g.,* MFA/AIMA Comment Letter I.

[93] *See, e.g.,* MMI Comment Letter.

[94] *See, e.g.,* Wellington Comment Letter; IAA Comment Letter; Pickard Djinis Comment Letter.

[95] Our staff has indicated that it would not recommend enforcement action under the current rule with respect to written communications by an adviser to an existing investor about the performance of securities in the investor's account because such communications would not be ''offers'' of advisory services, and instead are ''part of'' those advisory services (unless the context in which the communication is provided suggests otherwise). *See* Investment Counsel Association of America, Inc., SEC Staff No-Action Letter (Mar. 1, 2004) (''ICAA Letter''). Any staff guidance or no-action letters discussed in this release represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved their content. Staff guidance has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

We agree that the rule should treat only those communications that offer *new* or *additional* advisory services with regard to securities to current investors as advertisements because they raise the same concerns as other advertisements. Our intent is not to chill ordinary course communications with current investors. We believe that other protections prevent advisers from engaging in activities that mislead or deceive existing investors.[96] For example, existing and prospective advisory clients receive the anti-fraud protections of the Advisers Act and an adviser's fiduciary duty.[97] Accordingly, under the final rule a communication to a current investor is an advertisement when it offers *new* or *additional* investment advisory services with regard to securities. We believe that this modification will allow advisers to continue to provide current investors with timely information regarding their accounts and the market without subjecting those communications to the marketing rule.[98]

In summary, we view an adviser seeking to offer new or additional investment advisory services with regard to securities to current investors as posing the same risks to investors as an adviser seeking to offer such services to new investors and therefore we believe this activity warrants the same treatment under the final marketing rule.

v. Brand Content, General Educational Material, and Market Commentary

Other commenters asked us to confirm that brand content, general educational material, and market commentary are not advertisements under the rule.[99] Whether a communication is an advertisement depends on the facts and circumstances (*e.g.,* whether the communication ''offers'' the adviser's investment advisory services with regard to securities). Generally, generic brand content, educational material, and market commentary would not meet the revised definition of an advertisement.

*Brand content.* Determining whether a communication including ''brand'' content (*e.g.,* displays of the advisory firm name in connection with sponsoring sporting events, supporting community service activities, or supporting philanthropic efforts) is an advertisement would depend on the facts and circumstances.[100] If such a communication is designed to raise the profile of the adviser generally, but does not offer any investment advisory services with regard to securities, the communication would not fall within the definition of an advertisement under the rule. For example, a communication that simply notes that an event is ''brought to you by XYZ Advisers'' would not qualify as an advertisement, as it is not offering any advisory services with regard to securities.

*General educational information and market commentary.* We believe that the same analysis applies for communications that provide only general educational information and market commentary.[101] Educational communications that are limited to providing general information about investing, such as information about types of investment vehicles, asset classes, strategies, certain geographic regions, or commercial sectors, do not constitute offers of an adviser's investment advisory services with regard to securities.

Similarly, materials that provide an adviser's general market commentary (including during press interviews) are unlikely to offer advisory services with regard to securities. Market commentary aims to inform current and prospective investors, including private fund investors, of market and regulatory developments in the broader financial ecosystem. These materials also help current investors interpret market and regulatory shifts by providing context when reviewing investments in their portfolios, and educate investors.[102] In contrast, for example, we would view an article or white paper that provides general market commentary and concludes with a description of how the adviser's securities-related services can help prospective investors invest in the market as offering the adviser's services. Accordingly, that portion of the white paper would be an advertisement.

b. Exclusions

The rule will generally exclude two types of communications from the first prong of the definition of advertisement: (i) Extemporaneous, live, oral communications; and (ii) information required by statute or regulation.[103]

i. Extemporaneous, Live, Oral Communications

In a change from the proposal, the definition of advertisement will not include extemporaneous, live, oral communications, regardless of whether they are broadcast and regardless of whether they take place in a one-on-one context and involve discussion of hypothetical performance. We proposed an exclusion for live, oral communications that are not broadcast on radio, television, the internet, or any other similar medium. Commenters generally supported the exclusion, but had questions about certain aspects. For example, some commenters expressed concern about the treatment of written materials that accompany or are used to prepare for oral presentations, stating that treating such materials as advertisements would hamper an adviser's ability to prepare for a presentation.[104] Other commenters questioned the scope of the exclusion, with some arguing that it was too narrow[105] and others arguing that it was too broad.[106]

The goal of the exclusion for live, oral communications was to avoid treating extemporaneous statements as advertisements, in light of the difficulties in ensuring that they comply with the requirements of the rule, and to avoid chilling adviser communications with investors. If

[96] *See, e.g.,* section 206 of the Advisers Act; rule 206(4)–8 under the Advisers Act.

[97] *See* Fiduciary Interpretation, *supra* footnote 88. *See also* IAA Comment Letter; Pickard Djinis Comment Letter.

[98] Their exclusion from the definition of advertisement will not prevent these account statements or transaction reports from being subject to the other provisions of the Federal securities laws, including section 17(a) of the Securities Act or section 10(b) of the Exchange Act (and rule 10b–5 thereunder), to the extent those provisions would otherwise apply. Likewise, regardless of whether a communication to an existing or prospective investor is an ''advertisement'' under the marketing rule, the communication is subject to the anti-fraud provisions of section 206 of the Act and the aforementioned provisions of the Federal securities laws.

[99] *See, e.g.,* SIFMA AMG Comment Letter II; JG Advisory Comment Letter; MMI Comment Letter; IAA Comment Letter; MFA/AIMA Comment Letter I.

[100] *See* SIFMA AMG Comment Letter II.

[101] *See, e.g.,* SIFMA AMG Comment Letter II; Mercer Comment Letter; IAA Comment Letter; Wellington Comment Letter.

[102] *See, e.g.,* MMI Comment Letter (emphasizing the importance of allowing general market commentary to provide investors with the tools to challenge the assumptions of those who counsel them on financial management).

[103] As discussed above, the rule also excludes from the first prong of the advertisement definition a communication that includes hypothetical performance that is provided in response to an unsolicited investor request for such information or to a private fund investor in a one-on-one communication. *See* final rule 206(4)–1(e)(1)(i)(C)*(1)* and *(2)*.

[104] *See, e.g.,* MFA/AIMA Comment Letter I; AIC Comment Letter (stating that ''written materials prepared in conjunction with any live oral communications should not be considered 'advertisements' and should be able to rely on the exclusion if (*i*) they are in draft form, (*ii*) they are internal documents not created for distribution, or (*iii*) all or portions of their content may not be provided to any prospective or current investor.'').

[105] *See* SIFMA AMG Comment Letter II (arguing that it is not clear how to define communications that are broadcast and widely disseminated versus those that are not); AIC Comment Letter.

[106] *See, e.g.,* NASAA Comment Letter; CFA Comment Letter; ILPA Comment Letter.

remarks are extemporaneous, they cannot be simultaneously monitored for regulatory compliance, and to require otherwise may simply cause advisers to cease extemporaneous speech to the overall detriment of investors. However, we believe that communications prepared in advance can and should be subject to the rule. Accordingly, the final exclusion will apply only to extemporaneous, live, oral communications.[107]

Extemporaneous communications do not include prepared remarks or speeches, such as those delivered from scripts.[108] In addition, slides or other written materials that are distributed or presented to the audience would also be included as advertisements if they otherwise meet the definition. On the other hand, live, extemporaneous, oral discussions with a group of investors or interviews with the press that are not based on prepared remarks will be eligible for the exclusion. This approach aligns with the purpose of the exclusion, which is to avoid a chilling effect on extemporaneous, oral speech that might occur if such communications were required to comply with the requirements of the final rule.

Some commenters recommended that we further expand the exclusion to apply to certain written communications.[109] While we appreciate that other modern communication methods facilitate instantaneous written conversations (*e.g.,* text messages, chat), this exclusion is limited to extemporaneous, live, oral communications, because in those circumstances a speaker often does not have sufficient time to edit and reflect on the content of the communication.[110]

Some commenters suggested that we exclude all broadcast communications and adopt an approach similar to FINRA.[111] Commenters also sought guidance on the meaning of the following terms: ''broadcast'' [112] and ''widely disseminated.'' [113] In response to commenters' concerns, we are not adopting the requirement that the live, oral communication is ''not broadcast.'' We believe the concerns that prompted this exclusion apply equally to extemporaneous, live, oral communications regardless of whether they are broadcast. We also believe that the exclusion should not allow an adviser to avoid application of the rule for a previously prepared live, oral communication in a non-broadcast setting, such as a luncheon seminar designed to attract new investors. In addition, commenters raised a variety of concerns with identifying whether a communication is broadcast in light of modern media tools, suggesting that line drawing as to when a communication is broadcast may be challenging in practice.[114] As a result, the exclusion will apply to a broadcast communication, such as a webcast, that is an extemporaneous, live, oral communication.

The exclusion will apply to ''live'' oral communications, as proposed. Accordingly, previously recorded oral communications disseminated by the adviser would not qualify as live because the adviser had time to review and edit the recording before such dissemination and thus can ensure compliance with the marketing rule. In these circumstances, an adviser would need to treat its subsequent dissemination of the recording as an advertisement under the rule if the recording offers the adviser's investment advisory services with regard to securities. However, we believe that an oral communication would be ''live'' even if there is a time lag (*e.g.,* streaming delay), a translation program is used, or adaptive technology is used to create a personal transcription (*e.g.,* voice to text technology or other tools that assist the deaf, hard-of-hearing, or hearing loss communities).

ii. Information Contained in a Statutory or Regulatory Notice, Filing, or Other Required Communication

The final rule excludes from the definition of advertisement ''[i]nformation contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.'' [115] In response to commenters, we have broadened the proposed exclusion, which would have applied to ''[a]ny information required to be contained in a statutory or regulatory notice, filing, or other communication.'' [116] Commenters generally supported the proposed exclusion,[117] but recommended we expand it to ease compliance burdens and avoid duplicative regulation that would have resulted from applying another layer of review to mandatory filings.[118]

Specifically, commenters stated that compliance personnel would have difficulty determining exactly which information contained in a regulatory filing is strictly and explicitly required by applicable law versus which information is not (and would therefore be subject to the rule). In response to these comments, we broadened the exclusion to cover information in a statutory or regulatory, notice, filing or other required communication, provided the information is *reasonably designed* to satisfy the requirements, rather than information *required to be* contained in such a communication.[119] For example, information reasonably designed to satisfy the requirements of Form ADV Part 2 or Form CRS will not be an advertisement.[120]

[107] A communication need not be in-person to qualify for the exclusion so long as it is live and oral. For example, a phone call or live video communication between an adviser and an investor could qualify for this exclusion.

[108] As discussed in the recordkeeping section below, a live, oral communication by an adviser that is not extemporaneous (but that otherwise satisfies the definition of advertisement) would be an advertisement and a record of the advertisement must be maintained pursuant to rule 204–2(a)(11)(i)(A). The record of the advertisement could be a copy of the prepared remarks, other written preparatory materials, or a recording of the oral communication.

[109] *See, e.g.,* AIC Comment Letter (stating that live written communications (*e.g.,* live text chats) should also qualify for the exclusion in order to reflect modern communication methods).

[110] We consider a communication to still be ''oral'' even if closed captioning is used, but not if the oral communication is transcribed and the transcription is then directly or indirectly redistributed by the adviser. *See, e.g.,* Mercer Comment Letter (seeking clarification that closed captioning would not prevent a communication from qualifying for the exclusion).

[111] *See, e.g.,* SIFMA AMG Comment Letter II; Fidelity Comment Letter.

[112] *See, e.g.,* Fidelity Comment Letter (noting that (i) advisers may use various forms of technology to communicate with clients, including web chats or videos and (ii) further limiting the exclusion ''would capture routine communications between advisers and their clients merely because of the medium in which they are being conducted.''); SIFMA AMG Comment Letter II (arguing that it is not clear how to define communications that are broadcast and widely disseminated versus those that are not).

[113] *See, e.g.,* SIFMA AMG Comment Letter II; Consumer Federation Comment Letter.

[114] *See, e.g.,* SIFMA AMG Comment Letter II; Fidelity Comment Letter.

[115] Final rule 206(4)–1(e)(1)(i)(B). As with the exclusion for extemporaneous, live, oral communications, the exclusion for regulatory notices will apply regardless of whether the notice includes a discussion of hypothetical performance.

[116] Proposed rule 206(4)–1(e)(1)(iv).

[117] *See, e.g.,* Mercer Comment Letter; NRS Comment Letter.

[118] *See, e.g.,* Comment Letter of Ropes & Gray LLP (Feb. 10, 2020) (''Ropes & Gray Comment Letter''); (noting that the proposal raises questions as to what information is required in Commission filings, especially for publicly traded advisers); Comment Letter of BlackRock, Inc. (Feb. 10, 2020) (''BlackRock Comment Letter'') (same); SIFMA AMG Comment Letter II (noting that advisers are already subject to legal duties and potential liability for information included in regulatory filings making it unlikely that advisers would include excess information in such filings).

[119] *See* final rule 206(4)–1(e)(1)(i)(B).

[120] *See* Form CRS Relationship Summary; Amendments to Form ADV, Release No. IA–5247 (June 5, 2019) [88 FR 33573 (July 12, 2019)] (''Form

This exclusion will apply to information that an adviser provides to an investor under any statute or regulation under Federal or state law, including rules promulgated by regulatory agencies. We generally do not believe that communications that are prepared as a requirement of statutes, rules, or regulations should be viewed as advertisements under the final rule.[121] However, if an adviser includes in such a communication information that is not reasonably designed to satisfy its obligations under applicable law, and such additional information offers the adviser's investment advisory services with regard to securities, then that information will be considered an ''advertisement'' for purposes of the rule.

3. Definition of Advertisement: Compensated Testimonials and Endorsements, Including Solicitations

To reflect the merger of the two rules, the final rule's definition of ''advertisement'' includes a new second prong that applies to ''any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly'' subject to an exclusion for certain regulatory notices, filings, and other required communications.[122] A compensated testimonial or endorsement will meet the definition of advertisement's second prong regardless of whether the communication is made orally or in writing, to one or more persons.[123] By contrast, an uncompensated testimonial or endorsement would have to meet the elements of prong one in order to be considered an ''advertisement.''

a. Definitions of Testimonial and Endorsement

The final definition of testimonial includes any statement by a current client or private fund investor about the client's or private fund investor's experience with the investment adviser or its supervised persons.[124] The definition of endorsement includes any statement by a person other than a current client or private fund investor that indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons.[125] This scope of how these activities are defined is similar to the proposal, with a few changes described below, including adding solicitation and referral activities drawn from the proposed definition of solicitor.

These definitions include statements about the adviser's ''supervised persons,'' rather than the proposed inclusion of statements about the adviser's ''advisory affiliates.'' [126] One commenter recommended this change, stating that an endorsement or testimonial regarding a supervised person is more likely to provide relevant information to an investor than a statement about an adviser's advisory affiliate.[127]

We received a variety of comments about the statements these definitions would capture. One commenter supported a broad approach that would include statements about an adviser's traits, such as trustworthiness, to reflect the commenter's belief that prospective clients typically select an adviser based on emotion.[128] Another commenter requested that we limit the definitions to include only statements that explicitly discuss the adviser's services or capabilities as an adviser.[129]

Under the final marketing rule, testimonials and endorsements will include opinions or statements by persons about the investment advisory expertise or capabilities of the adviser or its supervised persons.[130] Testimonials and endorsements also include statements in an advertisement about an adviser or its supervised person's qualities (*e.g.,* trustworthiness, diligence, or judgment) or expertise or capabilities in other contexts, when the statements suggest that the qualities, capabilities, or expertise are relevant to the advertised investment advisory services. We believe that an investor would likely perceive these statements as relevant to the adviser's investment advisory services.[131]

The definitions of testimonial and endorsement under the final rule also include solicitation and referral activities drawn from the proposed definition of solicitor.[132] After considering comments on the overlapping scope of testimonials, endorsements, and solicitations under the proposed advertising and solicitation rules, we are adding solicitation activities to the definitions of testimonial and endorsement. The definition of testimonial includes any statement by a current client or private fund investor that directly or indirectly solicits any investor to be the adviser's client or a private fund investor, or refers any investor to be the adviser's client or a private fund investor. The definition of endorsement includes any such statements by a person other than a current client or private fund investor. This change will address compensated

CRS Adopting Release'') (noting that the relationship summary is designed to serve as disclosure, rather than marketing material).

[121] However, information that is required to be provided or offered by the final rule will not qualify for this exclusion. For example, final rule 206(4)–1(d)(2) requires an adviser to provide performance results over one-, five-, and ten-year periods. This information is part of the advertisement and subject to the rule.

[122] Final rule 206(4)–1(e)(1)(ii).

[123] *See id.* The definition of advertisement's second prong includes a testimonial or endorsement for which an adviser directly or indirectly provides *de minimis* compensation (as defined below). However, these types of testimonials and endorsements will be exempt from some of the final rule's prescribed conditions for testimonials and endorsements. *See infra* section II.C.5.

[124] Final rule 206(4)–1(e)(17)(i). We proposed to define ''testimonial'' as ''any statement of a client's or investor's experience with the investment adviser or its advisory affiliates, as defined in the Form ADV Glossary of Terms.'' *See* proposed rule 206(4)–1(e)(15).

[125] Final rule 206(4)–1(e)(5)(i). We proposed to define ''endorsement'' as ''any statement by a person other than a client or investor indicating approval, support, or recommendation of the investment adviser or its advisory affiliates, as defined in the Form ADV Glossary of Terms.'' *See* proposed rule 206(4)–1(e)(2). To align the definitions of testimonial and endorsement better, and address situations where an endorser who is not a client nevertheless provides statements about the endorser's experience with the adviser, the final definition of endorsement includes any statement made by a non-investor that describes the endorser's experience with the adviser or its supervised persons, like under the definition of testimonial.

[126] Final rule 206(4)–1(e)(5)(i) and (17)(i). Under the final rule, supervised person has the same meaning as in section 2(a)(25) of the Act. Final rule 206(4)–1(e)(16). *See also* proposed rule 206(4)–1(e)(2) and (15) (referring to advisory affiliates).

[127] *See* Pickard Djinis Comment Letter.

[128] *See* Comment Letter of William A. Jacobson, Esq., Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic (Feb. 3, 2020) (''Prof. Jacobson Comment Letter'').

[129] *See* SIFMA AMG Comment Letter II.

[130] Complete or partial client lists that do no more than identify certain of the adviser's clients or private fund investors will not be treated as testimonials. *See also* 2019 Proposing Release, *supra* footnote 7, at 78.

[131] *See* Dan Gallagher, Staff No-Action Letter (pub. avail. July 10, 1995) (stating that the staff could not assure that it would not recommend enforcement action for a violation of rule 206(4)–1 if the letter writer used client testimonials describing its character and skills in relation to matters other than the letter writer's role as an investment adviser). *See also* Guidance on the Testimonial Rule and Social Media, Division of Investment Management Guidance Update No. 2014–04 (Mar. 2014) (''IM Staff Social Media Guidance'') (withdrawing staff position in the Gallagher Staff No-Action Letter). *See infra* section II.J.

[132] Final rule 206(4)–1(e)(5)(ii) and (iii), and (e)(17)(ii) and (iii). *See also* proposed rule 206(4)–3(c)(4) (proposing to define ''solicitor'' as ''any person who, directly or indirectly, solicits any client or private fund investor for, or refers any client or private fund investor to, an investment adviser''). Both the proposal's definition of ''solicitor'' and the final rule's inclusion of solicitation and referral activities are drawn from the current cash solicitation rule's definition of ''solicitor,'' with the exception that the current rule does not apply to solicitation of private fund investors. *See* rule 206(4)–3(d)(1).

testimonials and endorsements under one rule with one set of conditions. For example, a person providing an endorsement or testimonial under the final rule might be a firm that solicits for an adviser (such as a broker-dealer or a bank), an individual at a soliciting firm who engages in solicitation activities for an adviser (such as a bank representative or an individual registered representative of a broker-dealer), or both. Other examples could be an unaffiliated fund-of-funds or a feeder fund that solicits investors in an underlying fund or a master fund, respectively.

b. Cash and Non-Cash Compensation

The second prong of the final marketing rule's definition of advertisement is triggered by any form of compensation—whether cash or non-cash—that an adviser provides, directly or indirectly, for an endorsement or testimonial. This mirrors the types of compensation that we stated would trigger the proposed solicitation rule and the proposed advertising rule's compensation disclosure requirement in connection with a testimonial, endorsement, or third-party rating.[133] As we stated about both proposed rules, compensation an adviser provides, directly or indirectly, for these activities can incentivize a person to provide a positive statement about, solicit an investor for, or refer an investor to, the investment adviser.[134] Therefore, we believe that the marketing rule's protections should apply.

Some commenters agreed that non-cash compensation creates the same conflicts of interest as cash compensation for solicitation.[135] These commenters also agreed that investors should be made aware of the solicitor's conflict of interest regardless of the form of compensation. Other commenters, however, raised concerns about extending the rule to cover certain forms of non-cash compensation, such as gifts and entertainment,[136] or non-transferable advisory fee waivers in connection with refer-a-friend arrangements.[137] Some commenters argued that the final rule should only apply to solicitations for which the adviser provides incentive-based compensation tied to the funding of an advisory account and the solicitation activities are directed at specific clients.[138] Commenters generally opposed applying the proposed solicitation rule to communications to investors in private funds, which we address below.[139]

Forms of compensation under the final marketing rule will include fees based on a percentage of assets under management or amounts invested, flat fees, retainers, hourly fees, reduced advisory fees, fee waivers, and any other methods of cash compensation, and cash or non-cash rewards that advisers provide for endorsements and testimonials, including referral and solicitation activities.[140] They also include directed brokerage that compensates brokers for soliciting investors,[141] sales awards or other prizes, gifts and entertainment, such as outings, tours, or other forms of entertainment that an adviser provides as compensation for testimonials and endorsements. In addition, compensated endorsements and testimonials may or may not be contingent on the endorsement or testimonial resulting in a new advisory relationship or a new investment in a private fund. We believe that non-cash compensation, including forms of entertainment, can incentivize persons to provide a positive statement about an adviser, or make a referral or solicitation on an adviser's behalf and should be included in the rule to make clients aware of such incentive. Whether an adviser provides cash or non-cash compensation in exchange for a testimonial or endorsement depends on the particular facts and circumstances.[142]

Some commenters requested that we exclude training or meetings that educate solicitors about the adviser's services, even if there are some incidental benefits associated with such training.[143] We continue to believe, as we stated in the 2019 Proposing Release, that attendance at training and education meetings, including company-sponsored meetings such as annual conferences, will not be non-cash compensation, provided that attendance at these meetings or trainings is not provided in exchange for solicitation activities.[144]

Some commenters also raised concerns about potentially conflicting regulations for advisers dually registered as broker-dealers with respect to the inclusion of sales awards as non-cash compensation under the proposed solicitation rule.[145] While we acknowledge that other Commission rules for broker-dealers address concerns underlying non-cash compensation in the context of recommendations, the final marketing rule covers a broader range of activities and types of promoters.[146] Thus, we do

[133] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.4 and II.B.2 and text accompanying n.172.

[134] *See id.* at n.372. The proposed solicitation rule would have applied to an adviser's direct and indirect compensation to a solicitor for any solicitation activities. *See* proposed rule 206(4)–3(a). The current cash solicitation rule also covers direct and indirect cash compensation. *See* rule 206(4)–3(a). Similarly, our proposed advertising rule would have required disclosure, if applicable, that cash or non-cash compensation has been provided by or on behalf of the adviser in connection with obtaining or using the testimonial or endorsement. *See* proposed rule 206(4)–1(b)(1)(ii).

[135] *See* Consumer Federation Comment Letter; Mercer Comment Letter.

[136] *See* MFA/AIMA Comment Letter I; MMI Comment Letter (stating that the rule should not apply to an adviser that sends a gift to a third-party adviser or broker-dealer with which it routinely does business, and such third party completely unrelatedly refers a client to the adviser, unless the third party has a reasonable expectation that it will receive some form of compensation from the adviser in exchange for that referral).

[137] *See* IAA Comment Letter (also recommending that the rule exclude refer-a-friend programs that involve a small amount of compensation per referral). While the final marketing rule will apply to all compensated refer-a-friend programs (regardless of the form of compensation), we expect that many advisers that engage in these programs will fall under the *de minimis* exemption, and be subject to fewer conditions than other compensated testimonials and endorsements. *See infra* footnote 481.

[138] *See* SIFMA AMG Comment Letters I & III; FSI Comment Letter.

[139] *See infra* section II.A.4.

[140] *See* 2019 Proposing Release, *supra* footnote 7, at nn.357 and 358 and accompanying text (discussing, for example, refer-a-friend programs).

[141] Advisers are currently required to disclose to clients in the Form ADV brochure if they consider, in selecting or recommending broker-dealers, whether they or a related person receives client referrals from a broker-dealer or third party. As proposed, broker-dealers or dual registrants that receive brokerage for solicitation of client accounts in wrap fee programs that they do not sponsor will be subject to the final marketing rule if they solicit those clients to participate in the wrap fee program. *See* 2019 Proposing Release, *supra* footnote 7, at section II.B.2.

[142] Although commenters did not specifically address to what extent compensation paid to an adviser's personnel, such as an employee, would implicate the proposed solicitation rule, we are clarifying that compensation for purposes of prong two of the definition of advertisement will not include regular salary or bonuses paid to an adviser's personnel for their investment advisory activities or for clerical, administrative, support or similar functions.

[143] *See, e.g.,* MMI Comment Letter; MFA/AIMA Comment Letter I (discussing training for certain fund-of-funds arrangements); SIFMA AMG Comment Letter III (encouraging the Commission to draw from a FINRA 2016 proposal relating to non-cash compensation, which the commenter states includes conditions such as prior approval, attendance not being preconditioned on the achievement of certain sales targets, appropriate location (whether an office or other facility) and no payment for additional guests).

[144] *See* 2019 Proposing Release, *supra* footnote 7, at n.360.

[145] *See* SIFMA AMG Comment Letters I & III (requesting alignment with FINRA's 2016 non-cash compensation rule proposal); FSI Comment Letter.

[146] *See, e.g.,* Regulation Best Interest, Release No. 34–86031 (June 5, 2019) [84 FR at 33400 (July 12, 2019)] (''Regulation Best Interest Release'') (adopting rule 15l–1 under the Exchange Act,

not believe that an exemption for sales awards or contests from the final marketing rule would be appropriate on these grounds. As discussed further below, however, we are adopting a partial exemption for broker-dealers from the rule's disqualification provisions. We are also adopting partial exemptions from the disclosure provisions when a broker-dealer provides a testimonial or endorsement to a retail customer that is a recommendation subject to Regulation Best Interest (''Regulation BI'') under the Securities Exchange Act of 1934 (the ''Exchange Act'') and from certain disclosure requirements when a broker-dealer provides a testimonial or endorsement to a person that is not a retail customer (as that term is defined in Regulation BI).[147]

Other commenters stated non-cash compensation could capture benefits that advisers provide in the ordinary course of business unrelated to any solicitation activity.[148] Relatedly, some commenters considered our proposed view of ''indirect'' compensation overly broad, particularly with respect to non-cash compensation.[149] These commenters recommended that we apply the final rule only to compensation an adviser provides to a solicitor after its solicitation activities, unless the solicitation agreement between the adviser and solicitor specifically includes compensation provided prior to the solicitation; or replace the solicitation rule's reference to compensation that an adviser provides ''indirectly'' with compensation that is direct or ''in connection with solicitation activities.'' [150] Others expressed concerns that, under our proposed solicitation rule, every mutually beneficial arrangement between an investment adviser and a potential facilitator of client relationships would be subject to scrutiny for indicia of *quid pro quo* solicitation.[151]

We believe the timing of compensation relative to an endorsement or testimonial is relevant in determining whether an adviser is providing compensation for the testimonial or endorsement. In addition, we believe that there will be a mutual understanding of a *quid pro quo,* whether explicit or inferred based on facts and circumstances, for most compensated endorsements or testimonials.[152] However, we decline to draw bright lines around either the timing of the compensation or the establishment of a mutual understanding. We believe such bright lines would unnecessarily limit the final rule and would encourage advisers to structure their arrangements to avoid application of the rule in situations where it would otherwise apply. In addition, we believe that in many cases compensation will be in connection with testimonials and endorsements. We decline to remove the word ''indirectly'' from the rule for the same reasons discussed above.[153]

c. Activities That Constitute a Testimonial or Endorsement

Some commenters requested guidance on whether certain activities would constitute solicitation or referral activities under the proposed amendments to the solicitation rule.[154] Since the combined marketing rule includes statements that solicit investors for, or refer investors to, an investment adviser as testimonials or endorsements, we are addressing these comments in the context of these definitions.

For example, some commenters questioned whether lead-generation firms or adviser referral networks (collectively, ''operators'') would fall into the scope of the rule. One commenter described these operators as networks operated by non-investors where an adviser compensates the operator to solicit investors for, or refer investors to, the adviser.[155] Another commenter described these operators as for-profit or non-profit entities that make third-party advisory services (such as model portfolio providers) accessible to investors, and stated that the operators do not promote or recommend particular services or products accessible on the platform.[156] In both examples, the operator's website likely meets the final marketing rule's definition of endorsement. An operator may tout the advisers included in its network, and/or guarantee that the advisers meet the network's eligibility criteria. In addition, because operators typically offer to ''match'' an investor with one or more advisers compensating it to participate in the service, operators typically engage in solicitation or referral activities.[157]

Similarly, a blogger's website review of an adviser's advisory service would be a testimonial or an endorsement under the final marketing rule because it indicates approval, support, or a recommendation of the investment adviser, or because it describes its experience with the adviser.[158] If the adviser directly or indirectly compensates the blogger for its review, for example by paying the blogger based on the amount of assets deposited in new accounts from client referrals or the number of accounts opened, the testimonial or endorsement will be an advertisement under the definition's second prong.[159] Depending on the facts and circumstances, a lawyer or other service provider that refers an investor to an adviser, even infrequently, may

requiring broker-dealers to establish written policies and procedures reasonably designed to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or the sale of specific types of securities within a limited period of time, noting that these compensation practices create high-pressure situations for associated persons to increase the sales of specific securities or specific types of securities within a limited period of time and thus compromise the best interests of their retail customers). The policies and procedures required thereunder must also be reasonably designed to identify and mitigate any conflicts of interest associated with the broker-dealer's recommendations to retail customers that create an incentive for the broker-dealer's associated persons to place their interest or the interest of the broker-dealer ahead of the retail customer's interest. *Id.*

[147] *See id.* Regulation BI defines a retail customer as a ''natural person, or the legal representative of such natural person.'' *See id.,* at 768.

[148] *See, e.g.,* MFA/AIMA Comment Letter I; Fidelity Comment Letter; Fried Frank Comment Letter; IAA Comment Letter; Mercer Comment Letter; SIFMA AMG Comment Letter I.

[149] *See, e.g.,* SIFMA AMG Comment Letters I & III; FSI Comment Letter.

[150] *See* SIFMA AMG Comment Letter III.

[151] *See, e.g.,* MFA/AIMA Comment Letter I; Mercer Comment Letter.

[152] We would expect that, where required, the written agreement would be evidence of such a mutual understanding in most circumstances. *See infra* section II.C.3.

[153] For example, an adviser will be subject to the rule's provisions for compensated testimonials and endorsements when the adviser's parent company pays a third party to endorse the adviser to the third party's network of members that are prospective clients. *See* final rule 206(4)–1(b). Such indirect compensation could include the adviser's parent company providing representatives to the third party and compensating them to promote the adviser's business.

[154] *See, e.g.,* FSI Comment Letter; SIFMA AMG Comment Letter I; MFA/AIMA Comment Letter I; Fried Frank Comment Letter; IAA Comment Letter.

[155] *See* Commonwealth Comment Letter. This commenter stated that such operators typically offer to ''match'' an investor with an adviser. When an investor clicks on a link, the investor provides information to the operator (*e.g.,* age, investable assets, and goals) and the operator matches the investor to one or more advisers participating in the service. Advisers generally pay a flat fee and/or a per-lead fee to receive matches of potential investors from the operator.

[156] *See* MMI Comment Letter (stating that in some cases, the operator charges an administrative or service fee to the investment advisers whose products and services are accessible through the operator).

[157] *See* final rule 206(4)–1(e)(5)(ii) and (iii) and (17)(ii) and (iii).

[158] *See* final rule 206(4)–1(5)(i) and (17)(i).

[159] *See* final rule 206(4)–1(e)(1)(ii).

also meet the rule's definition of testimonial or endorsement.

On the other hand, where an adviser pays a third-party marketing service or news publication to prepare content for and/or disseminate a communication, we generally would not treat this communication as an endorsement under the second prong of the definition of ''advertisement.'' [160] Similarly, a non-investor selling an adviser a list containing the names and contact information of prospective investors typically would not, without more, meet the definition of endorsement.[161] This activity typically would not fall within the plain text of the definition of endorsement (*e.g.,* the seller does not indicate approval, support, or recommendation of the investment adviser, or describe its experience with the adviser, or engage in the solicitation or referral activities described therein).

One commenter requested an exclusion from the definition of solicitor under the proposed solicitation rule for an investment consultant that administers a RFP to aid one or more investors in selecting an investment adviser or a private fund investment vehicle.[162] The commenter stated that the investor typically hires the consultant (the ''agent''), subject to the understanding that the investor will only enter into a transaction with an investment adviser that agrees to pay the expenses of the agent for providing this service.[163] In these circumstances, we do not believe the adviser typically compensates the agent to endorse the adviser because the investor engages the agent to evaluate the adviser based on criteria that the investor provides.[164]

d. Exclusion for Regulatory Communications; Inclusion of One-on-One and Extemporaneous, Live, Oral Communications

The second prong of the definition of advertisement excludes any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.[165] As with the same exclusion in the first prong of the definition, this exclusion reflects our belief that communications that are prepared as a requirement of statutes, rules, or regulations should not be viewed as advertisements under the rule.

Unlike the first prong of the definition of advertisement, however, this prong does not exclude extemporaneous, live, oral communications or one-on-one communications. These types of communications are precisely what the second prong of the definition seeks to address, along with other types of endorsement and testimonial activities. The current solicitation rule has also addressed these types of communications. In addition, the second prong does not exclude communications that include hypothetical performance information.

Compensated testimonials and endorsements have the potential to mislead given a promoter's financial incentive to recommend the adviser. Without appropriate safeguards, a compensated testimonial or endorsement creates a risk that the investor would mistakenly view the promoter's recommendation as being an unbiased opinion about the adviser's ability to manage the investor's assets and would rely on that recommendation more than the investor otherwise would if the investor knew of the promoter's incentive.

Finally, some commenters requested an exclusion from the proposed solicitation rule for persons registered with the Commission as broker-dealers under the Exchange Act.[166] We continue to believe that the final rule's investor protections should apply to compensated endorsements and testimonials by any person, including a registered broker-dealer. However, we are adopting a partial exemption from the rule's disqualification provisions for certain compensated testimonials and endorsements made by a registered broker-dealer.[167] We also are adopting a partial exemption from the rule's disclosure provisions when a broker-dealer provides a testimonial or endorsement to a retail customer that is a recommendation subject to Regulation BI.[168]

e. Investment Adviser and Broker-Dealer Status and Registration for Persons Who Provide Endorsements or Testimonials

We proposed to withdraw our position that a solicitor who engages in solicitation activities in accordance with paragraph (a)(2)(iii) of the cash solicitation rule will be, at least with respect to those activities, an associated person of an investment adviser and therefore will not be required to register individually under the Advisers Act solely as a result of those activities (the ''1979 position'').[169] Although the 1979 position will no longer apply upon the rescission of the current solicitation rule, we are not adopting a similar position with respect to endorsements and testimonials under the final marketing rule.

A promoter may, depending on the facts and circumstances, be acting as an investment adviser within the meaning of section 202(a)(11) of the Act.[170] Investment adviser status and registration questions require analysis of the applicable facts and circumstances, including, for example, whether a person is ''advising'' others within the meaning of section 202(a)(11) of the Act.[171] A promoter also may be acting as a broker or dealer within the meaning

[160] However, such a communication would be an advertisement under the first prong of the definition of ''advertisement.'' *See supra* section II.A.2.

[161] *See* Nesler Comment Letter.

[162] *See* IAA Comment Letter (alternately requesting, in the absence of an exclusion, clarification as to status under the proposed solicitation rule). This commenter stated that these agents facilitate submissions by investment advisers in the RFP process and prepare reports for prospective investors regarding investment advisers under consideration. Furthermore, in many cases the adviser must enter into an agreement with the agent to participate in the RFP process.

[163] We understand that the consultant is typically not an advisory client of the advisers it selects to participate in the RFP process, and therefore the final rule's testimonial provision would usually not apply.

[164] Though a *quid pro quo* is not always determinative of whether the compensation element of this prong of the definition of advertisement is satisfied, these facts suggest a lack of *quid pro quo* and, without more, would not implicate the second prong of the definition. The adviser in this scenario will likely also not implicate the first prong of the definition of advertisement because the adviser is not making a direct or indirect communication to more than one person that offers the investment adviser's investment advisory services with regard to securities to investors. *See* final rule 206(4)–1(e)(1)(i). *See also supra* section II.A.2.

[165] *See* final rule 206(4)–1(e)(1)(ii).

[166] *See* Credit Suisse Comment Letter (citing the ''robust regulatory framework'' already applicable to SEC-registered broker-dealers); MFA/AIMA Comment Letter I.

[167] *See infra* section II.C.5.

[168] *See id.*

[169] *See* 2019 Proposing Release, *supra* footnote 7, at n.346. Two commenters argued that, as a matter of statutory interpretation, solicitors fall within the Act's definition of ''person associated with an investment adviser.'' *See* SIFMA AMG Comment Letter II; Credit Suisse Comment Letter.

[170] Depending on the facts and circumstances, a promoter may also be acting as an investment adviser under applicable state law.

[171] Commission staff previously stated that a person providing advice to a client as to the selection or retention of an investment manager or managers also, under certain circumstances, would be deemed to be ''advising'' others within the meaning of section 202(a)(11) of the Act. *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, Release No. IA–1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)], at footnote 6 and accompanying text. However, solicitation of clients may *not* involve providing investment advice on behalf of an adviser. *See* Release 1633, *supra* footnote 4, at text accompanying n.123. *See also* Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion to the Definition of Investment Adviser, Release No. IA–5249 (June 5, 2019) [84 FR 33669 (July 12, 2019)].

of section 3(a)(4) or 3(a)(5) of the Exchange Act, for example, when soliciting investors for, or referring investors to, an adviser or a private fund advised by the adviser. Any promoter must determine whether it is subject to statutory or regulatory requirements under Federal law, including the requirement to register as an investment adviser pursuant to the Act and/or as a broker-dealer pursuant to section 15(a) of the Exchange Act, respectively. If the promoter is a supervised person of the adviser for which it is providing a testimonial or endorsement, the promoter does not need to separately register with the Commission as an investment adviser solely as a result of his or her activities as a promoter.[172] A promoter also must determine whether it is subject to certain state law and certain FINRA rules, including any applicable state licensing requirements applicable to individuals.[173] To be clear, we are *not* making a presumption that a person providing an endorsement or testimonial meets the definition of investment adviser or broker-dealer and must register under the Act or the Exchange Act, respectively. Nor are we making a presumption that such person may or may not be an associated person of a registered investment adviser. Indeed, we agree that some promoters may meet the definition of associated person of an investment adviser depending on the facts and circumstances.[174] Others may not.[175] Under the final marketing rule, if an adviser determines that a person providing an endorsement or testimonial is an associated person, the adviser should have requisite control of such person.[176]

4. Investors in Private Funds

Both prongs of the definition of ''advertisement'' will expressly include marketing communications to private fund investors. The term ''private fund'' is defined in section 202(a)(29) of the Advisers Act and means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (''Investment Company Act''), but for section 3(c)(1) or 3(c)(7) of that Act. This is consistent with the scope of the proposed amendments to the solicitation rule.[177] We are not adopting the broader scope of the proposed amendments to the advertising rule, which generally would have applied to advertisements sent to investors in ''pooled investment vehicles,'' as defined in rule 206(4)–8 under the Act.[178] In connection with these changes, we have eliminated the need for the proposed exclusion for advertisements, other sales materials, and sales literature of registered investment companies (''RICs'') and business development companies (''BDCs'') that are within the scope of rule 482 or 156 under the Securities Act of 1933 (''Securities Act'').[179]

Although we used different terms in each proposal, the scope of the proposals effectively would have covered only certain communications to private fund investors. In our advertising rule proposal, we included all pooled investment vehicles and then excepted RIC or BDC advertisements that were subject to rule 482 or 156 under the Securities Act.[180] We did not seek to apply the proposed solicitation rule to promotional activity involving RICs and BDCs because we believed that the primary goal of the proposal was already satisfied by other regulatory requirements.[181] Most notably, prospective investors in RICs and BDCs sold through a broker-dealer or other financial intermediary already receive disclosure about the conflicts of interest that may be created due to the fund or its related companies paying the intermediary for the sale of its shares and related services.[182]

Commenters generally opposed applying the two rules to communications to private fund investors.[183] They stated that existing, general anti-fraud provisions provide sufficient protection and any additional regulation would be unnecessary and duplicative.[184] Other commenters supported explicitly including private funds in the scope of the rules, arguing that doing so would provide important protections to investors in these funds.[185]

We recognize that rule 206(4)–8 prohibits advisers to private funds from making misstatements or materially misleading statements to investors in those vehicles.[186] An adviser's general anti-fraud obligations to investors in private funds under rule 206(4)–8 parallel an adviser's general anti-fraud

[172] An adviser's registration with the Commission covers its supervised persons, provided that their advisory activities are undertaken on the adviser's behalf.

[173] Most states impose registration, licensing, or qualification requirements on investment adviser representatives who have a place of business in the state, regardless of whether the investment adviser is registered with the Commission or the state. *See* Staff of the U.S. Securities and Exchange Commission, Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011), available at *https://www.sec.gov/news/studies/2011/913studyfinal.pdf,* at 86. *See also* rule 203A–3(a)(1) (definition of ''investment adviser representative''). In some states, a third-party solicitor will be subject to state qualification requirements to the extent state investment adviser statutes apply to solicitors. *See* Release 1633, *supra* footnote 4, at text accompanying n.125.

[174] *See* Nesler Comment Letter (arguing that an SEC-registered adviser should be entitled to treat a non-employee solicitor as an ''associated person'' as long as the adviser exercises control and supervision over such solicitor in connection with the performance of its solicitation activities).

[175] *See* Pickard Djinis Comment Letter (describing that solicitors that perform paid unscripted media campaigns on behalf of advisers, may not be under the adviser's control). Such a paid solicitor may not be a ''person associated with the investment adviser,'' depending on the facts and circumstances.

[176] *See* rule 204A–1(a) (requiring adviser codes of ethics that, among other things, require supervised persons to comply with applicable Federal securities laws).

[177] *See* proposed rule 206(4)–3(c)(2).

[178] *See* proposed rule 206(4)–1(e)(9). *See also* definition of ''pooled investment vehicle'' in rule 206(4)–8 under the Act.

[179] Commenters recommended that the final rule exclude all communications to investors in RICs and BDCs because the statutory anti-fraud provisions and other Commission rules apply to these communications. *See, e.g.,* IAA Comment Letter; Comment Letter of the European Fund and Asset Management Association (Feb. 13, 2020) (''EFAMA Comment Letter'') (suggesting that the final rule also exclude non-U.S. funds that are publicly offered (including UCITS)); ICI Comment Letter (recommending that the Commission exclude all registered fund communications from the scope of the rule, including sales literature subject to rule 34b–1 under the Investment Company Act and generic advertisements subject to rule 135a under the Securities Act). Given the regulatory framework applicable to communications to investors in RICs and BDCs, we do not believe the additional protections of the Advisers Act marketing rule are necessary.

[180] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.; proposed rule 206(4)–1(e)(9).

[181] *See* 2019 Proposing Release, *supra* footnote 7, at section II.B.3.

[182] *See* Item 8 of Form N–1A. *See also* FINRA rule 2341(l)(4) (generally prohibiting member firms from accepting any cash compensation from an investment company, an adviser to an investment company, a fund administrator, an underwriter or any affiliated person (as defined in section 2(a)(3) of the Investment Company Act) of such entities unless such compensation is described in a current prospectus of the investment company).

[183] *See, e.g.,* AIC Comment Letter; MFA/AIMA Comment Letter I; Comment Letter of the National Venture Capital Association (Feb. 14, 2020) (''NVCA Comment Letter''); IAA Comment Letter.

[184] *See, e.g.,* AIC Comment Letter (citing rule 206(4)–1(a)(5) and rule 206(4)–8 under the Advisers Act); NVCA Comment Letter (citing rule 156(b)(3)(ii) under the Securities Act).

[185] *See, e.g.,* ILPA Comment Letter; SBIA Comment Letter. *See also* Consumer Federation Comment Letter; EFAMA Comment Letter (supporting additional protections for investors in pooled investment vehicles, but seeking an exception for certain non-U.S. domiciled funds).

[186] Section 206(4) of the Advisers Act authorizes the Commission to adopt rules and regulations that ''define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.'' 15 U.S.C. 80b–6(4). *See* rule 206(4)–8(a)(1). We are adopting this rule under the same authority of section 206(4) of the Advisers Act on which we relied in adopting rule 206(4)–8. *See* Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles, Release No. IA–2628 (Aug. 3, 2007) [75 FR 44756 (Aug. 9, 2007)].

obligations to all clients and prospective clients under section 206 of the Act. Accordingly, although the final marketing rule overlaps with the prohibitions in rule 206(4)–8 in certain circumstances, just as it overlaps with section 206 with respect to an adviser's clients and prospective clients, we believe it is important from an investor protection standpoint to delineate these obligations to all investors in the advertising context and provide a framework for an adviser's advertisements to comply with these obligations.

By including marketing communications to private fund investors, the final rule will provide more specificity (and certainty) regarding what we believe to be untrue or misleading statements that advisers must avoid in their advertisements.[187] The general prohibitions, for example, will provide advisers with a principles-based framework to assess private fund advertisements and will provide greater clarity, compared to the anti-fraud provisions of the Act, on marketing practices that are likely misleading.[188] This approach is consistent with some commenters who stated that the Commission should finalize rules in a manner that provides guidance to advisers on how to comply with a principles-based approach without creating overly prescriptive requirements that can be difficult to apply in practice.[189]

We understand that many private fund advisers already consider the current staff positions related to the current advertising rule when preparing their marketing communications.[190] As a result, we believe that our application of the final rule to advertisements to private fund investors would result in limited additional regulatory or compliance costs for many of these advisers.

We also believe that the modifications from the proposal will reduce potential costs and alleviate commenters' concerns regarding the application of the final rule to an adviser's advertisements to private fund investors. For example, the first prong of the definition of advertisement will not include one-on-one communications to private fund investors or communications with existing investors; as such, those communications will be subject to rule 206(4)–8 and not the advertising rule.[191] The first prong of the definition of advertisement also excludes live, oral, extemporaneous communications. Further, we are not adopting a requirement for an adviser to pre-review all advertisements prior to dissemination or requirements for retail versus non-retail advertisements, as discussed below.[192] Collectively, we believe these changes appropriately scope advertisements that would be subject to the rule.

Not all communications to private fund investors would be advertisements under the final rule. Most commenters stated that private placement memoranda (''PPMs'') should not be treated as advertisements.[193] We agree that information included in a PPM about the material terms, objectives, and risks of a fund offering is not an advertisement of the adviser.[194] Private fund account statements, transaction reports, and other similar materials delivered to existing private fund investors, and presentations to existing clients concerning the performance of funds they have invested in (for example, at annual meetings of limited partners) also would not be considered advertisements under the final rule. However, pitch books or other materials accompanying PPMs could fall within the definition of an advertisement.

Some commenters sought clarification that due diligence rooms and their contents would not be considered advertisements.[195] While due diligence rooms themselves are not advertisements, it is possible that some of the information they contain could qualify as an advertisement if the materials satisfy the requirements of the advertisement definition.

Some commenters recommended expanding the final rule to other types of unregistered pooled investment vehicles, and one commenter specified which other types of unregistered pooled investment vehicles should be subject to the rule.[196] While these commenters generally supported the idea of extending the scope of the rule, they did not explain why. Accordingly, we believe that the scope of the final rule is appropriate at this time.

A commenter specifically sought confirmation that the proposed rules would not apply to an adviser whose principal office and place of business is outside the United States (offshore adviser) with regard to *any* of its non-U.S. clients even if the non-U.S. client is a fund with U.S. investors.[197] This commenter and others also asked the Commission to clarify the application of the proposals to communications with non-U.S. investors in funds domiciled outside of the United States.[198] We have previously stated, and continue to take the position, that most of the substantive provisions of the Advisers Act do not apply with respect to the non-U.S. clients (including funds) of a registered offshore adviser.[199] This

[187] For example, rule 206(4)–8 prohibits investment advisers to pooled investment vehicles from engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. The final rule will include more specific provisions in the context of advertisements. *See* final rule 206(4)–1(b) through (d). To the extent that an advertising practice would violate a specific restriction imposed by the final rule, rule 206(4)–8 may already prohibit the practice.

[188] We recognize that a single investor could invest in both private funds managed by the adviser and other products (*e.g.,* separately managed accounts) managed by the adviser. The final rule would ensure that advisers apply the same principles-based framework across products and services, which could reduce advisers' compliance burdens.

[189] *See* MFA/AIMA Comment Letter III. *But see supra* footnotes 183–184.

[190] *See* SBIA Comment Letter; NRS Comment Letter.

[191] These communications also are subject to various statutory and regulatory anti-fraud provisions, such as section 17(a) of the Securities Act, section 10(b) of the Exchange Act, and rule 10b–5 thereunder.

[192] *See infra* sections II.E. and II.G. *See also* NYC Bar Comment Letter (discussing the administrative and compliance burdens and costs associated with applying the standards for Retail Advertisements and Non-Retail Advertisements (each as defined below) for private funds under the proposed advertising rule).

[193] *See, e.g.,* MFA/AIMA Comment Letter I; AIC Comment Letter; Proskauer Comment Letter.

[194] PPMs are subject to the anti-fraud provisions of the Federal securities laws. *See also supra* footnote 88 (discussing an adviser's fiduciary duties). Whether particular information included in a PPM constitutes an advertisement of the adviser depends on the relevant facts and circumstances. For example, if a PPM contained related performance information of separate accounts the adviser manages, that related performance information is likely to constitute an advertisement.

[195] *See, e.g.,* MFA/AIMA Comment Letter I; IAA Comment Letter; ILPA Comment Letter (seeking clarification that non-promotional material contained in a data room would not be subject to the rule).

[196] *See, e.g.,* EFAMA Comment Letter (supporting the Commission's proposal to increase protections to investors in collective investment schemes, but recommending that the Commission exclude (i) non-U.S. domiciled publicly offered, closed-end and open-end investment funds, including UCITS, and (ii) alternative investment funds and other non-U.S. domiciled funds that would be an investment company, as defined in section 3 of the Investment Company Act, but for sections 3(c)(1) or 3(c)(7) of that Act); ILPA Comment Letter (recommending expanding to funds excluded from the definition of investment company by reason of section 3(c)(5) or 3(c)(11) of the Investment Company Act).

[197] *See* Sidley Austin Comment Letter; *see also* Registration Under the Advisers Act of Certain Hedge Fund Advisers, Release No. IA–2333 (Dec. 2, 2004) [69 FR 72054, 72072 (Dec. 10, 2004)] (''Hedge Fund Adviser Release'').

[198] *See* IAA Comment Letter; EFAMA Comment Letter.

[199] *See* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Release No. IA–3222

approach was designed to provide appropriate flexibility where an adviser has its principal office and place of business outside of the United States.[200] We believe it is appropriate to continue to apply this approach in this context. For an adviser whose principal office and place of business is in the United States (onshore adviser), the Advisers Act and rules thereunder apply with respect to the adviser's U.S. and non-U.S. clients.[201]

*B. General Prohibitions*

We are adopting, largely as proposed, the general prohibitions of certain marketing practices as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts. We believe these practices are associated with a significant risk of being false or misleading. We therefore believe it is in the public interest to prohibit these practices, rather than permit them subject to specified conditions. The general prohibitions will apply to all advertisements to the extent that an adviser directly or indirectly disseminates such advertisement. Specifically, in any advertisement, an adviser may not:

(1) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;

(2) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission;

(3) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

(4) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

(5) Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;

(6) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or

(7) Otherwise be materially misleading.

As noted in the proposal, to establish a violation of the rule, the Commission will not need to demonstrate that an investment adviser acted with scienter; negligence is sufficient.[202]

Many commenters supported the prohibitions' principles-based framework.[203] However, other commenters found the proposed general prohibitions confusing and redundant and suggested streamlining them into fewer standards (or eliminating them altogether) and relying on the general anti-fraud standard instead.[204] After considering comments, we are making certain modifications, as discussed below. We continue to believe that prohibiting certain marketing practices is appropriate and that the final provisions provide important requirements for investment advisers and protections for investors. In our view, the general prohibitions provide greater clarity on marketing practices that are likely misleading compared to just relying on the anti-fraud provisions of the Act. We also believe that the general prohibitions we are adopting provide appropriate flexibility and regulatory certainty for advisers considering how to market their investment advisory services.

In applying the general prohibitions, an adviser should consider the facts and circumstances of each advertisement. The nature of the audience to which the advertisement is directed is a key factor in determining how the general prohibitions should be applied.[205] For instance, the amount and type of information that may need to be included in an advertisement directed at retail investors may differ from the information that may need to be included in an advertisement directed at sophisticated institutional investors.

We discuss below each of the general prohibitions and the comments we received.

1. Untrue Statements and Omissions

As proposed, the final rule will prohibit advertisements that include any untrue statements of a material fact, or that omit a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading.[206] One commenter argued that this prohibition would be duplicative of sections 206(1) and (2) of the Advisers Act, which prohibit advisers from ''employ[ing] any device, scheme or artifice to defraud any client or prospective client'' and ''engag[ing] in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective

(June 22, 2011) [76 FR 39645 (July 6, 2011)] (Most of the substantive provisions of the Advisers Act do not apply to the non-U.S. clients of a non-U.S. adviser registered with the Commission.); Hedge Fund Adviser Release, *supra* footnote 197 (stating that the following rules under the Advisers Act would not apply to a registered offshore adviser, assuming it has no U.S. clients: Compliance rule, custody rule, and proxy voting rule and stating that the Commission would not subject an offshore adviser to the rules governing adviser advertising [17 CFR 275.206(4)–1], or cash solicitations [17 CFR 275.206(4)–3] with respect to offshore clients); American Bar Association, SEC Staff No-Action Letter (Aug. 10, 2006) (confirming that the substantive provisions of the Act do not apply to offshore advisers with respect to those advisers' offshore clients (including offshore funds) to the extent described in those letters and the Hedge Fund Adviser Release); IM Information Update No. 2017–03.

[200] *See* Hedge Fund Adviser Release, *supra* footnote 197 (noting that U.S. investors in an offshore fund generally would not expect the full protection of the U.S. securities laws and that U.S. investors may be precluded from an opportunity to invest in an offshore fund if their participation would result in full application of the Advisers Act and rules thereunder, but that a registered offshore adviser would be required to comply with the Advisers Act and rules thereunder with respect to any U.S. clients it may have).

[201] *See, e.g.,* Hedge Fund Adviser Release *supra* footnote 197.

[202] *See SEC* v. *Steadman,* 967 F.2d 636, 647 (D.C. Cir. 1992). As we noted when we adopted rule 206(4)–8, the court in *Steadman* analogized section 206(4) of the Advisers Act to section 17(a)(3) of the Securities Act, which the Supreme Court had held did not require a finding of scienter (*citing Aaron* v. *SEC,* 446 U.S. 680 (1980)). *See also Steadman* at 643, n.5. In discussing section 17(a)(3) and its lack of a scienter requirement, the *Steadman* court observed that, similarly, a violation of section 206(2) of the Advisers Act could rest on a finding of simple negligence. *See also* Fiduciary Interpretation, *supra* footnote 88, at n.20.

[203] *See, e.g.,* Wellington Comment Letter; ILPA Comment Letter; IAA Comment; NRS Comment Letter; and NAPFA Comment Letter.

[204] *See, e.g.,* MFA/AIMA Comment Letter I; Comment Letter of Managed Funds Association and Alternative Investment Management Association (May 8, 2020) (''MFA/AIMA Comment Letter II''). One commenter also argued that withdrawing the SEC staff no-action letters would create confusion and lack of guidance. NYC Bar Comment Letter (citing, for example, Clover Capital Mgmt., Inc., SEC Staff No-Action Letter (Oct. 28, 1986) (''Clover Letter''), Stalker Advisory Services, SEC Staff No-Action Letter (Jan. 18,1994) (Stalker Letter''), F. Eberstadt & Co., Inc., SEC Staff No-Action Letter (July 2, 1978) (''Eberstadt Letter''), TCW Group, SEC Staff No-Action Letter (Nov. 7, 2008) (''TCW Letter''), and Franklin Management, Inc., SEC Staff No-Action Letter (Dec. 10, 1998) (''Franklin Letter''). However, we do not view the principles of the general prohibitions to be substantive departures from the positions in existing staff no-action letters and guidance.

[205] The nature of the audience would be relevant if an adviser chooses to tailor the content of an advertisement to a specific audience because the content is not appropriate for a broader audience. FINRA has a similar requirement under its General Standards regarding Communications with the Public. *See* FINRA rule 2210(d)(1)(E) (''Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.'').

[206] Final rule 206(4)–1(a)(1).

client.'' [207] However, we view this prohibition as complementary to, rather than duplicative of, the statutory anti-fraud prohibitions cited by the commenter.[208] We continue to believe that this prohibition, together with the other general prohibitions under the rule, is appropriately designed to prevent fraud under the Act, specifically in the context of marketing. Moreover, this provision retains the substance of current rule 206(4)–1(a)(5).[209]

As with similar anti-fraud provisions in the Federal securities laws, whether a statement is false or misleading depends on the context in which the statement or omission is made.[210] For example, as under the current rule, advertising that an adviser's performance was positive during the last fiscal year may be misleading if the adviser omitted that an index or benchmark consisting of a substantively comparable portfolio of securities experienced significantly higher returns during the same period. To avoid making a misleading statement, the adviser in this example could include the relevant index or benchmark or otherwise disclose that the adviser's performance, although positive, significantly underperformed the market.[211]

Under the final rule, it would be misleading for an adviser to compensate a person to refer investors to the adviser by stating that the person had a ''positive experience'' with the adviser when such person is not a client or private fund investor of the adviser for its advisory services. To avoid making such a statement misleading, the adviser could disclose that the experience does not relate to any advisory services. It would also be misleading for an adviser to use a promoter's testimonial or endorsement that the adviser knows or reasonably should know to be fraudulent, misleading, or untrue, regardless of whether the adviser compensates the promoter. For instance, an adviser may not provide a testimonial on its website where a client falsely claims that the client has worked with the adviser for over 20 years when the adviser has only been in business for five years.

The current rule contains an explicit prohibition on advertisements that contain statements to the effect that a report, analysis, or other service will be furnished free of charge, unless the analysis or service is actually free and without condition.[212] We continue to believe that this practice will be captured by the final rule's prohibition on untrue statements or omissions. As a result, the final rule will not contain separate explicit prohibitions of such statements. In addition, depending on the disclosures provided and the extent to which an adviser in fact does provide investment advice solely based on such materials, it may be false or misleading under this provision to represent, directly or indirectly, in an advertisement that any graph, chart, or formula can by itself be used to determine which securities to buy or sell.[213]

2. Unsubstantiated Material Statements of Fact

The proposed rule would have prohibited advertisements that include any material claim or statement that is unsubstantiated.[214] Commenters argued that the proposed ''substantiation'' requirement would be overly burdensome.[215] For example, two commenters argued that it would require advisers to obtain evidence to support every claim or statement in an advertisement out of uncertainty as to what might be ''material.'' [216] Commenters also found the requirement unclear, questioning whether, for example, such a prohibition would effectively foreclose any statements of opinion.[217] We are sensitive to commenters' concerns regarding the burdens and lack of clarity of this proposed provision. As a result, we are making two changes to the requirement.

First, we are limiting the substantiation requirement to matters of material *fact* rather than any material claim or statement. We do not believe that this would be unduly burdensome for advisers as such material statements of fact, as opposed to opinions, should be verifiable. For instance, material facts might include a statement that each of its portfolio managers holds a particular certification or that it offers a certain type or number of investment products. Claims about performance would also be statements about material facts.[218] Conversely, statements that clearly provide an opinion would not be statements of material fact.

Second, we are requiring advisers to have a *reasonable basis* to believe that they can substantiate material claims of fact *upon demand* by the Commission.[219] This change is designed

[207] NYC Bar Comment Letter. This commenter also noted that section 206(4) prohibits investment advisers from ''engag[ing] in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.''

[208] While we acknowledge there may be circumstances that are covered by both the anti-fraud prohibitions and this provision, we believe that this provision helps provide specificity when addressing an adviser's marketing activities. In addition, to the extent possible, this rule can serve as a resource for identifying an adviser's obligations with respect to marketing generally, and thus we believe that retaining this general prohibition will serve to assist advisers in meeting their compliance obligations.

[209] Current rule 206(4)–1(a)(5) prohibits an advertisement that contains any untrue statement of a material fact and uses similar wording as other anti-fraud provisions in the Federal securities laws. *See, e.g.,* 17 CFR 240.10b–5; 15 U.S.C. 77q(a)(2); 17 CFR 230.156(a); rule 206(4)–8.

[210] When we use the phrase ''false or misleading statements'' in this release, we are referring to this general prohibition against advertisements that include any untrue statements of a material fact, or omissions of a material fact necessary in order to make a statement, in the light of the circumstances under which it was made, not misleading.

[211] Although one commenter stated that an adviser should be required to show returns of an appropriate benchmark for the same periods as presented for the adviser's performance, we do not believe that it is necessary to prescribe such disclosures and that such decisions should be left at the discretion of the adviser, subject to the general prohibitions of the final rule and the general anti-fraud provisions of the Federal securities laws. *See* CFA Institute Comment Letter. Accordingly, we are not requiring the inclusion of a relevant index or benchmark to avoid making any presentation of performance misleading.

[212] *See* current rule 206(4)–1(a)(4); *see also* Dow Theory Forecasts, Inc., SEC Staff No-Action Letter (May 21, 1986) (''Dow Theory Letter'') (staff declined to provide no-action recommendation where an offer for ''free'' subscription was subject to conditions).

[213] An adviser's use of graphs, charts, or formulas to represent, directly or indirectly, that such graphs, charts, or formulas can in and of themselves be used to determine which securities to buy or sell, or when to buy or sell them, is explicitly prohibited in the current rule. *See* current rule 206(4)–1(a)(3) (also prohibiting an advertisement from representing, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell them, without disclosing the limitations and difficulties with respect to the use of such a graph, chart, formula or other device).

[214] *See* proposed rule 206(4)–1(a)(2).

[215] *See, e.g.,* MFA/AIMA Comment Letter I (stating that this requirement would greatly increase cost and operational burdens and curb the flow of information to clients and investors); FPA Comment Letter; NVCA Comment Letter; Fried Frank Comment Letter.

[216] *See* MFA/AIMA Comment Letter I; Fried Frank Comment Letter.

[217] *See, e.g.,* MFA/AIMA Comment Letter I; FPA Comment Letter; Fried Frank Comment Letter.

[218] For example, we would view performance returns included in an advertisement to be material statements of fact that an adviser would need a reasonable basis for believing that it will be able to substantiate. Because current rule 204–2(a)(16) already requires the maintenance of records ''to support the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any . . . advertisement,'' we believe that any recordkeeping burden related to performance information included in an advertisement will not be significantly new or altered. *See* current rule 204–2(a)(16). Final rule 204–2(a)(16) will similarly require advisers to retain records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts, portfolio or securities recommendations presented in any advertisement. *See* final rule 204–2(a)(16).

[219] Final rule 206(4)–1(a)(2). Demand by the Commission includes demand by the Commission's

to reduce burdens on advisers and allow them to avoid the need to develop and maintain a file of substantiating materials for every advertisement.[220]

Advisers would be able to demonstrate this reasonable belief in a number of ways. For example, they could make a record contemporaneous with the advertisement demonstrating the basis for their belief.[221] An adviser might also choose to implement policies and procedures to address how this requirement is met. However, if an adviser is unable to substantiate the material claims of fact made in an advertisement when the Commission demands it, we will presume that the adviser did not have a reasonable basis for its belief. We believe that the burden on advisers to have a reasonable basis for believing they will be able to substantiate a material statement of fact upon demand by the Commission is justified by the importance of ensuring that advisers do not advertise material claims of fact that cannot be substantiated and the need to facilitate our staff's examination of advisers.

3. Untrue or Misleading Implications or Inferences

The proposed rule would have prohibited any advertisement that includes an untrue or misleading implication about, or is reasonably likely to cause an untrue or misleading inference to be drawn concerning, a material fact relating to an investment adviser.[222] After considering comments, we are adopting this prohibition but modifying it to add the reasonableness standard to ''implication,'' and not only to ''inference.'' [223] Accordingly, the final rule will prohibit an adviser from including, in any advertisement, information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to an investment adviser.[224]

One commenter suggested eliminating this prohibition altogether and instead relying on the prohibition against untrue statements or omissions, stating that it is difficult to enforce when something is ''implied'' or ''inferred.'' [225] However, we continue to believe that this prohibition appropriately addresses certain activities that would not be subject to the first prohibition, such as those raised in previous staff no-action letters.[226] For example, this provision will prohibit an adviser from making a series of statements in an advertisement that literally are true when read individually, but whose overall effect is reasonably likely to create an untrue or misleading inference or implication about the investment adviser.[227] For instance, if an adviser were to state accurately in an advertisement that it has ''more than a hundred clients that have stuck with me for more than ten years,'' we believe it may create a misleading implication if the adviser actually has a very high turnover rate of clients. Additionally, this provision will prohibit an adviser from stating that all of its clients have seen profits, even if true, without providing appropriate disclosures if it only has two clients, as it may be reasonably likely to cause a misleading inference by potential clients that they would have a high chance of profit by hiring the adviser as well.

Commenters requested more guidance regarding when advertised testimonials would comply with this general prohibition.[228] Two commenters argued that it would effectively eliminate an adviser's ability to use testimonials if advisers had to present negative testimonials alongside positive ones, particularly in the context of online and social media platforms.[229]

We do not believe that the general prohibition requires an adviser to present an equal number of negative testimonials alongside positive testimonials in an advertisement, or balance endorsements with negative statements in order to avoid giving rise to a misleading inference, as certain commenters suggested.[230] Rather, the general prohibition requires the adviser to consider the context and totality of information presented such that it would not reasonably be likely to cause any misleading implication or inference. General disclaimer language (*e.g.,* ''these results may not be typical of all investors'') would not be sufficient to overcome this general prohibition. However, one approach that we believe would generally be consistent with the general prohibitions would be for an adviser to include a disclaimer that the testimonial provided was not representative, and then provide a link to, or other means of accessing (such as oral directions to go to the relevant parts of an adviser's website), all or a representative sample of the testimonials about the adviser.

As discussed in further detail in section II.B.5. below, we believe this provision (along with the other provisions discussed below) will prohibit ''cherry picking'' of past investments or investment strategies of the adviser—that is, including favorable results while omitting unfavorable ones in a manner that is not fair and balanced.

4. Failure To Provide Fair and Balanced Treatment of Material Risks or Material Limitations

The proposed rule would have prohibited advertisements that discuss

examiners or other representatives. The adviser's obligation to produce such materials on demand will last as long as the relevant advertisement needs to be retained under the recordkeeping rule. *See* current rule 204–2(e)(1).

[220] *See, e.g.,* MFA/AIMA Comment Letter I; NVCA Comment Letter.

[221] Some advisers likely will (and some already do) maintain records to substantiate non-performance material statements of fact included in an advertisement when the advertisement is created; however, this is not required as long as the adviser has a reasonable basis for believing it will be able to substantiate the information upon demand by the Commission.

[222] *See* proposed rule 206(4)–1(a)(3).

[223] *See* Flexible Plan Investments Comment Letter II.

[224] Final rule 206(4)–1(a)(3). An adviser's statements in an advertisement also are subject to section 208(a) of the Act, which generally states that it is unlawful for a registered investment adviser to represent or imply that it has been sponsored, recommended, or approved by any agency of the United States. Section 208(b) of the Act generally states that Section 208(a) shall not be construed to prohibit a person from stating that he is registered with the Commission as an investment adviser if the statement is true and if the effect of his registration is not misrepresented. Nevertheless, an adviser's use of the phrase ''registered investment adviser'' (or the initials ''RIA'' or ''R.I.A.'') to state or imply that it has a level of professional competence, education or other special training could be misleading under the final rule.

[225] CFA Institute Comment Letter.

[226] *See, e.g.,* Clover Letter (stating the use of performance results in an advertisement in the staff's view would be false or misleading if it implies, or a reader would infer from it, something about the adviser's competence or about future investment results that would not be true had the advertisement included all material facts); Stalker Letter (stating that copies of articles printed in independent publications that contain performance information of an adviser would be prohibited if they implied false or misleading information absent additional facts); Eberstadt Letter (stating that advertisements could be misleading if they imply positive facts about the adviser when additional facts, if also provided, would cause the implication not to arise).

[227] *See* In the Matter of Spear & Staff, Inc., Release No. IA–188 (Mar. 25, 1965) (settled order) (the Commission brought an enforcement action against an investment adviser asserting, in part, that the adviser's advertisements, which recounted a number of factually accurate stories highlighting the outstanding investment success of certain selected clients collectively created ''illusory hopes of immediate and substantial profit'').

[228] *See* AIC Comment Letter (''The Proposing Release does not suggest how an adviser may ascertain whether a testimonial is representative of that adviser's investors. Such a determination may require that an adviser poll or survey a material sample of its investors.''); IAA Comment Letter; SIFMA AMG Comment Letter I; Comment Letter of Truth in Advertising, Inc. (Feb. 10, 2020) (''TINA Comment Letter'').

[229] *See* SIFMA AMG Comment Letter II and IAA Comment Letter.

[230] *See, e.g.,* IAA Comment Letter; SIFMA AMG Commenter Letter I.

or imply any potential benefits connected with or resulting from the investment adviser's services or methods of operation without clearly and prominently discussing associated material risks or other limitations associated with the potential benefits.[231] We are generally retaining this requirement with some modifications in response to comments.[232]

Some commenters suggested eliminating this prohibition, arguing that it is redundant since Form ADV Part 2 already requires the disclosure of material risks.[233] Commenters also expressed concern that this prohibition would expand the amount of required disclosures, dramatically lengthen advertisements, and overwhelm the content included in the advertisement.[234] One commenter recommended removing ''or imply'' from this prohibition, stating that it would be difficult for the Commission staff to prove something is implied.[235] Several commenters requested that the Commission permit the use of hyperlinks and layered disclosures to satisfy the requirement that the necessary disclosures be made ''clearly and prominently,'' arguing that such an approach would be consistent with the Commission's stated goal of modernizing the advertising rule.[236] Commenters also suggested that requiring an adviser to include detailed risk disclosures required under the proposed general prohibition in a clear and prominent manner may not be feasible in certain formats without the use of hyperlinks.[237]

In response to these concerns, we have modified this provision to prohibit advertisements that discuss any potential benefits connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits.[238] We continue to believe that advertisements should provide an accurate portrayal of both the risks and benefits of the adviser's services. However, as proposed, the prohibition may have led advisers to provide overly voluminous disclosure of associated material risks, as well as overly inclusive disclosure of ''other limitations.'' We believe this could have resulted in lengthy, boilerplate disclosure that could reduce the salience of the risk and limitation information for investors.

Because we are requiring fair and balanced treatment of material risks or material limitations associated with the benefits advertised, we no longer believe the requirement to ''clearly and prominently'' provide material risk disclosures is necessary.[239] The proposed prohibition was designed to mitigate the risk that an adviser's advertisement might discuss only the benefits of its services but not include sufficient information about the material risks that the client may face. We believe that the requirement to provide benefits and material risks in a fair and balanced manner similarly achieves this goal. In addition, it will promote a more digestible discussion for investors by making clear that advisers need not discuss every potential risk or limitation in detail, but must instead discuss the material risks and material limitations associated with the benefits in a fair and balanced manner.[240]

We expect that this approach will help facilitate layered disclosure. For example, an advertisement could comply with this requirement by identifying one benefit of an adviser's services, accompany the discussion of the benefit with fair and balanced treatment of material risks associated with that benefit within the four corners of that advertisement, and then include a hyperlink [241] to additional content that discusses additional benefits and additional risks of the adviser's services in a fair and balanced manner. So long as each layer of a layered advertisement complies with the requirement to provide benefits and risks in a fair and balanced manner, providing hyperlinks to additional content would meet the requirement of this general prohibition. However, an adviser should not use layered disclosure or hyperlinks to obscure important information. For instance, it would not be sufficient to advertise only an adviser's past profits on a web page and then include a hyperlink to another page that included all material risks and material limitations as that would violate the fair and balanced presentation requirement.

We are also removing the term ''imply'' from this general prohibition, which a commenter found unclear.[242] Removing the term imply will make this provision more consistent with similar requirements with which many advisers are already familiar.[243] In addition, we believe that the other general prohibitions (including the prohibition on information that could cause a misleading implication or inference to be drawn), address the concerns that led us to include the term imply in this general prohibition at proposal.

We believe this prohibition differs in scope from the disclosures required by Form ADV. For example, Item 8 of Form ADV Part 2A requires material risk disclosures more specifically with respect to investing in securities and certain investment strategies and risks involved. Moreover, an investment adviser must provide its brochure prepared in accordance with Form ADV to its *clients,* but not to *investors* in private funds it manages. The marketing rule's prohibition requires risk disclosures related to any potential benefits advertised to both clients and private fund investors. We believe that providing such disclosures in advertisements is necessary in order to avoid misleading potential investors as well as existing investors in connection with new services or investments.

5. Anti-Cherry Picking Provisions: References to Specific Investment Advice and Presentation of Performance Results

The final rule contains, as proposed, two other provisions designed to address concerns about investment advisers presenting potentially cherry-picked information in advertisements.

a. References to Specific Investment Advice

As proposed, the final rule will prohibit a reference in an advertisement to specific investment advice that is not presented in a fair and balanced manner.[244] Commenters supported

[231] Proposed rule 206(4)–1(a)(4).

[232] *See* final rule 206(4)–1(a)(4).

[233] *See, e.g.,* Ropes & Gray Comment Letter and MFA/AIMA Comment Letter I.

[234] *See* MFA/AIMA Comment Letter I.

[235] CFA Institute Comment Letter.

[236] *See, e.g.,* Fidelity Comment Letter; Ropes & Gray Comment Letter; IAA Comment Letter; Comment Letter of T. Rowe Price (Feb. 10, 2020) (''T. Rowe Price Comment Letter''); LinkedIn Comment Letter; SIFMA AMG Comment Letter II.

[237] *See, e.g.,* MFA/AIMA Comment Letter I; LinkedIn Comment Letter; Ropes & Gray Comment Letter.

[238] Final rule 206(4)–1(a)(4). For the sake of clarity, the materiality standard will explicitly apply to both the risks and the limitations.

[239] As we discussed in the proposal, this general prohibition was drawn from FINRA rule 2210's general standards. *See* FINRA rule 2210(d)(1)(D). The final rule's use of ''fair and balanced'' is more closely aligned with FINRA 2210, and accordingly, we believe that advisers that are familiar with those standards may be able to use that experience as a guide in complying with this requirement.

[240] For example, if an adviser states that it will reduce an investor's taxes through its tax-loss harvesting strategies, the adviser should also discuss the associated material risks or material limitations, including that any reduction in taxes would depend on an investor's tax situation.

[241] In addition to hyperlinks, advisers may use other tools to provide investors with layered disclosure, including QR codes or mouse-over windows.

[242] *See* CFA Institute Comment Letter.

[243] *See* rule 156(b)(3)(i); FINRA rule 2210(d)(1).

[244] *See* final rule 206(4)–1(a)(5).

replacing the current rule's *per se* prohibition against past specific recommendations with this principles-based restriction on the presentation of specific investment advice.[245] One commenter also supported the new fair and balanced standard.[246] However, some commenters requested more guidance on how to satisfy the fair and balanced standard.[247] Other commenters requested clarification that the principles from certain staff no-action letters would not be the sole means to comply with the fair and balanced standard.[248] One commenter asked whether we intend to incorporate the body of judicial or administrative decisions regarding FINRA rule 2210 and other similar provisions.[249]

We continue to believe this limitation requiring advertisements to have only fair and balanced inclusions of, or references to, specific investment advice is appropriate. The factors relevant to when an advertisement's presentation of specific investment advice is fair and balanced will vary depending on the facts and circumstances. We provide examples of such factors below to illustrate the principles.[250] While in some cases advisers may wish to consider FINRA's interpretations related to the meaning of ''fair and balanced'' for issues we have not specifically addressed, FINRA Rule 2210 and its body of decisions are not controlling or authoritative interpretations with respect to our final rule.

i. Examples Regarding the Presentation of Past Specific Investment Advice

An advertisement that references favorable or profitable past specific investment advice without providing sufficient information and context to evaluate the merits of that advice is not fair and balanced. For example, an adviser may wish to share a ''thought piece'' to describe the specific investment advice it provided in response to a major market event. This would be permissible under the final rule, provided the advertisement included disclosures with appropriate contextual information for investors to evaluate those recommendations (*e.g.,* the circumstances of the market event, such as its nature and timing, and any relevant investment constraints, such as liquidity constraints, during that time).

One practice currently used by advisers is to provide unfavorable or unprofitable past specific investment advice in addition to the favorable or profitable advice.[251] An adviser also may consider listing some, or all, of the specific investment advice of the same type, kind, grade, or classification as those specific investments presented in the advertisement.

As an example, an investment adviser might provide a list of certain investments it recommended based upon certain selection criteria, such as the top holdings by value in a given strategy at a given point in time. The criteria investment advisers use to determine such lists in an advertisement, as well as how the criteria are applied, should produce fair and balanced results. We continue to believe that consistent application of the same selection criteria across measurement periods limits an investment adviser's ability to reference specific investment advice in a manner that unfairly reflects only positive or favorable results.[252] For example, in deciding what to include in an advertisement, an adviser may wish to apply non-performance related selection criteria across portfolio holdings, such as listing them on an alphabetical or rotational basis.[253]

Some commenters questioned whether this aspect of the final rule would permit case studies, which are popular in the private equity industry.[254] We believe that case studies and any other similar information about the performance of portfolio companies are specific investment advice, subject to this general prohibition. For example, it would not be fair and balanced for an adviser to present, in an advertisement, case studies only reflecting profitable investments (when there are also similar unprofitable investments). To meet the fair and balanced standard, an adviser may, for example, disclose the overall performance of the relevant investment strategy or private fund for at least the relevant period covered by the list of investments. Case studies that include performance information also will be subject to the final rule's restrictions and requirements for performance advertising.[255]

In determining how to present information in a fair and balanced manner, advisers should consider the facts and circumstances of the advertisement, including the nature and sophistication of the audience. For example, in an advertisement intended for a retail investor, an adviser may include certain disclosures to help the investor understand that past specific investment advice does not guarantee future results such as an explanation of the particular or unique circumstances of the previous investment advice and how those circumstances are no longer relevant. Less detailed disclosure may be needed in an advertisement solely for sophisticated institutional investors, who more likely understand the risks associated with past specific investment advice.

In response to the commenters who asked for clarification that the methods described in past staff no-action letters on presenting past specific recommendations would not be the only way to meet the fair and balanced standard,[256] we are not prescribing any of the factors in those letters under the final rule. While advisers may wish to refer to these letters for examples, we agree with commenters that an adviser may satisfy the fair and balanced standard in other ways.[257]

[245] *See, e.g.,* MFA/AIMA Comment Letter I; IAA Comment Letter; T. Rowe Price Comment Letter.

[246] NRS Comment Letter.

[247] *See, e.g.,* ILPA Comment Letter (requesting clarification in the context of private equity funds); NASAA Comment Letter; Consumer Federation Comment Letter.

[248] *See* MFA/AIMA Comment Letter I; T. Rowe Price Comment Letter (noting that an adviser could mention security selections in a fair and balanced manner without complying with past staff positions).

[249] *See* NASAA Comment Letter. The phrase ''fair and balanced'' is used in FINRA rule 2210, which requires, among other things, that broker-dealer communications ''must be fair and balanced and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.'' *See* FINRA rule 2210(d)(1)(A).

[250] For selecting and presenting performance information, these factors are in addition to the requirements and restrictions on presentation of performance discussed in section II.A.5. *See* final rule 206(4)–1(c). In addition, other provisions of the general prohibitions may prohibit a reference to specific investment advice, depending on the facts and circumstances. *See* 2019 Proposing Release, *supra* footnote 7.

[251] As stated in the proposal, an adviser may consider the current rule's required disclosures when furnishing a list of all past specific recommendations made by the adviser within the immediately preceding period of not less than one year. *See* rule 206(4)–1(a)(2). However, the final rule will not require that an adviser include such disclosures, and such disclosures will not be the only way of satisfying paragraph (a)(4).

[252] An investment adviser should be mindful of the general prohibitions when selecting the measurement periods as well.

[253] Our staff has previously stated that it would not recommend enforcement action under rule 206(4)–1 relating to an advertisement that includes performance-based past specific recommendations based on certain representations, including that the adviser would use objective, non-performance based criteria to select the specific securities that it lists and discusses in the advertisement. *See* Franklin Letter. Although an adviser may find such staff positions helpful in complying with the final rule, the final rule does not include requirements corresponding to the specific representations in the Franklin letter.

[254] *See* AIC Comment Letter; ILPA Comment Letter.

[255] *See* final rule 206(4)–1(d).

[256] *See* MFA/AIMA Comment Letter I; T. Rowe Price Comment Letter.

[257] For example, our staff has stated that it would not recommend enforcement action under the

Continued

The final rule applies to any reference in an advertisement to specific investment advice given by the investment adviser, regardless of whether the investment advice is current or occurred in the past. This provision will apply regardless of whether the advice was acted upon, or reflected actual portfolio holdings, or was profitable. In addition, the provision applies to discretionary investments because the adviser is implementing its recommendation or advice in such a context.[258] We continue to believe that including current as well as past references to specific investment advice in the final rule is appropriate because it avoids questions about when a current recommendation becomes past, which arise under the current advertising rule. In addition, we continue to believe that selective references to current investment recommendations in advertisements could mislead investors in the same manner as selective references to past recommendations.

b. Presentation of Performance Results

As proposed, the final rule will prohibit an investment adviser from including or excluding performance results, or presenting performance time periods, in a manner that is not fair and balanced in an advertisement.[259] One commenter supported the proposed prohibition,[260] while two others argued that the fair and balanced standard is subjective and difficult to enforce in this context.[261] Some commenters requested more guidance by way of example to demonstrate how performance advertising could comply with the fair and balanced standard.[262]

We continue to believe that this prohibition appropriately addresses the concern that an adviser may ''cherry-pick'' the periods used to generate performance results in advertisements.[263] As with specific investment advice, the factors that are relevant to whether an advertisement's reference to performance information is presented in a fair and balanced manner will vary based on the facts and circumstances. For example, presenting performance results over a very short period of time (*e.g.,* two months), or over inconsistent periods of time, may result in performance portrayals that are not reflective of the adviser's general results and thus generally would not be fair and balanced. Additionally, an advertisement that highlights one period of extraordinary performance with only a footnote disclosure of unusual circumstances that have contributed to such performance may not be fair and balanced, depending on whether there are other sufficient clear and prominent disclosures, as discussed below.[264]

In cases where additional information is necessary for an investor to assess performance results, failure to provide such information in an advertisement is not consistent with the fair and balanced standard. For example, in order to provide investors with a fair and balanced portrayal of its performance results, an adviser should consider providing information related to the state of the market at the time, any unusual circumstances, and other material factors that contributed to such performance. In section II.E, we discuss further specific requirements and conditions for portrayals of certain types of performance in advertisements that we are also adopting as part of this final rule.

6. Otherwise Materially Misleading

Finally, we are adopting a catch-all provision, as proposed, that will prohibit any advertisement that is otherwise materially misleading.[265] We did not receive any comments on this catch-all provision. We continue to believe this prohibition will help ensure that materially misleading practices not specifically covered by the other prohibitions will be addressed. For example, if an adviser provided accurate disclosures, but presented them in an unreadable font, such an advertisement would be materially misleading and prohibited under this provision.

Because we are prohibiting a variety of specific types of advertisement practices within the general prohibitions, most of which include an element of materiality, as discussed above, we are focusing the catch-all provision on only those advertisements that are otherwise *materially* misleading. We continue to believe that limiting the catch-all to materially misleading advertisements will be more appropriate within the overall structure of the prohibitions while still achieving our goal of prohibiting misleading conduct that may affect an investor's decision-making process. We also continue to believe that, in light of the rule's prohibition on making untrue statements and omissions of material fact, including ''false'' is unnecessary in the catch-all provision as it is already covered by another prohibition.[266]

*C. Conditions Applicable to Testimonials and Endorsements, Including Solicitations*

1. Overview

Consistent with the proposal, the final rule permits advisers to include testimonials and endorsements in an advertisement, subject to the rule's general prohibitions and additional conditions.[267] These conditions differ depending on whether the testimonial or endorsement is compensated or uncompensated, which is similar to the framework we proposed.[268]

Numerous commenters supported the proposed expansion from the current advertising rule to permit advisers to include testimonials and endorsements in advertisements.[269] Commenters

current rule with respect to charts in an advertisement containing an adviser's best and worst performers in certain circumstances. *See* the TCW Letter. Our staff has also stated that it would not recommend enforcement action under current rule 206(4)–1 relating to an advertisement that includes performance-based past specific recommendations if the adviser uses objective, non-performance based criteria to select the specific securities that it lists and discusses in the advertisement in certain circumstances. *See* Franklin Letter.

[258] We understand there has been confusion under the current advertising rule's prohibition against past specific ''recommendations'' as to whether an adviser makes a ''recommendation'' when it implements its strategy in a discretionary account because an adviser would not contact its client to make a recommendation that the client then either chooses to implement or decline. We believe an adviser's recommendation, or investment advice, is implicit in the exercise of discretion.

[259] *See* final rule 206(4)–1(a)(6).

[260] *See* Ropes & Gray Comment Letter.

[261] Consumer Federation Comment Letter; NASAA Comment Letter.

[262] CFA Institute Comment Letter; Ropes & Gray Comment Letter; NASAA Comment Letter; ILPA Comment Letter.

[263] An advertisement that includes only favorable performance results or excludes only unfavorable performance results may also be ''misleading'' to the extent that such an advertisement would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning the investment adviser that would not be implied or inferred were certain additional facts—*i.e.,* any performance results excluded from the advertisement—disclosed. *See* final rule 206(4)–1(a)(3).

[264] *See* Amendments to Investment Company Advertising Rules, Release No. IC–26195 (Oct. 3, 2003) [68 FR 57760 (Oct. 6, 2003)].

[265] Final rule 206(4)–1(a)(7).

[266] *See* final rule 206(4)–1(a)(1).

[267] Statements made by an adviser that would be prohibited under the final rule's general prohibitions of certain marketing practices would also be prohibited in an adviser's advertisement if made by a third party in a covered testimonial or endorsement. For example, as we stated in the Proposing Release, we would generally view an advertisement as unlikely to be presented in a manner that is fair and balanced if it contains a testimonial, endorsement, or third-party rating that references performance information or specific investment advice provided by the adviser that was profitable but is not representative of the experience of the adviser's investors. 2019 Proposing Release, *supra* footnote 7, at section II.A.2.e.

[268] Final rule 206(4)–1(b).

[269] *See, e.g.,* Consumer Federation Comment Letter; IAA Comment Letter; LinkedIn Comment Letter; Fidelity Comment Letter; TINA Comment Letter.

explained that consumer preferences have shifted to rely increasingly on third-party resources to inform purchasing decisions.[270] Other commenters opposed permitting any testimonials or endorsements, paid or unpaid, in adviser advertisements.[271] These commenters were concerned that permitting advisers to advertise paid testimonials and endorsements would increase puffery and cause a ''race to the bottom'' for advisers seeking paid endorsements.[272]

As discussed above, we have expanded the definitions of both testimonial and endorsement to include certain solicitation activity.[273] This expansion recognizes the overlap between our approach to solicitation under the proposal and compensated testimonials and endorsements.[274] It is also designed to capture solicitation activities that previously have been subject to the cash solicitation rule and subject them to the marketing rule. The final rule includes conditions for an adviser's use of testimonials and endorsements designed to address concerns raised by commenters. These conditions include disclosure requirements to make prospective clients and investors aware of the conflicts of interest associated with testimonials and endorsements and a requirement that an investment adviser have a reasonable basis to believe that the testimonial or endorsement complies with the marketing rule. In addition, because we believe compensated testimonials and endorsements present a heightened risk for conflicts and misleading investors, the final rule will prevent advisers from using certain compensated testimonials and endorsements made by certain ''bad actors'' and other ineligible persons. The final rule will also require that an investment adviser have a written agreement with certain persons giving a testimonial or endorsement for compensation above the *de minimis* threshold.[275]

2. Required Disclosures

The final rule will require advertisements that include any testimonials or endorsements to provide disclosures of certain information similar to what was proposed under each of the advertising and solicitation rules, subject to certain exceptions, as discussed below. Specifically, the final rule will require that the investment adviser disclose, or reasonably believe that the person giving the testimonial or endorsement discloses, the following at the time the testimonial or endorsement is disseminated:

(i) Clearly and prominently:

(A) That the testimonial was given by a current client or private fund investor, and the endorsement was given by a person other than a current client or private fund investor, as applicable;

(B) That cash or non-cash compensation was provided for the *testimonial* or *endorsement,* if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the *testimonial* or *endorsement* resulting from the investment adviser's relationship with such person;

(ii) The material terms of any compensation arrangement including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and

(iii) A description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.[276]

We are not adopting the proposed requirement under the solicitation rule to disclose the amount of any additional cost to the investor as a result of solicitation for the reasons discussed below.[277] We believe that disclosures are needed to inform and protect investors effectively when they are presented with testimonials and endorsements. We also share the concerns raised by some commenters that permitting paid testimonials and endorsements would increase the likelihood that personal bias will mislead investors.[278] To address these issues in particular, we are adopting two disclosure requirements that we proposed under the solicitation rule—the disclosure of compensation arrangements and material conflicts of interest—under the final rule. We believe that these disclosures will benefit investors by providing them with a fuller context when presented with a testimonial or endorsement, without overly burdening those providing the testimonial or endorsement.

Some commenters suggested that we should align our disclosure approach with FINRA's rule 2210 to ease the compliance burdens of investment advisers that are registered broker-dealers or affiliated with broker-dealers.[279] However, instead of aligning our disclosures with FINRA's, such as FINRA's specific, standardized disclosures in rule 2210(d)(6),[280] we believe the final rule should provide advisers with a broad framework within which to determine how best to present testimonials and endorsements so they are not false or misleading. Accordingly, we are not adopting standardized disclosure requirements under our final rule. As a result, dually registered advisers and broker-dealers, that are not subject to the exemptions discussed below, that provide testimonials and endorsements with the disclosures required by FINRA should consider what additional or different disclosures they would need to make to comply with the final marketing rule.[281]

a. Clearly and Prominently

The final rule will require that particular disclosures with respect to testimonials and endorsements be made clearly and prominently.[282] The

[270] *See* Consumer Federation Comment Letter; IAA Comment Letter.

[271] *See* Comment Letter of TABR Capital Management, LLC (Jan. 6, 2020); Comment Letter of the Institute for the Fiduciary Standard (Feb. 10, 2020) (''Fiduciary Institute Comment Letter'').

[272] *See* NAPFA Comment Letter; Mercer Comment Letter (arguing that permitting paid endorsements will lead to largest advisers vying for endorsements from celebrities and popular ''financial gurus'').

[273] *See supra* section II.A.3.

[274] Final rule 206(4)–1(e)(6) and (16).

[275] *See* final rule 206(4)–1(b) (imposing disclosure, adviser oversight, and disqualification conditions). This approach derives from the current solicitation rule. *See also* final rule 206(4)–1(b)(4)(i).

[276] Final rule 206(4)–1(b)(1). We proposed the final disclosure requirements separately under the proposed amendments to the advertising rule and solicitation rule. The proposed advertising rule amendments would have required disclosures that: (1) The testimonial was given by a client or investor, and the endorsement was given by a non-client or non-investor, as applicable; and (2) if applicable, cash or non-cash compensation has been provided by or on behalf of the adviser in connection with obtaining or using the testimonial or endorsement. *See* proposed rule 206(4)–1(b)(1). The proposed amendments to the solicitation rule would have required disclosure of the terms of the compensation arrangement and description of any material conflicts of interest. *See* proposed rules 206(4)–3(a)(1)(iii)(D) and (E).

[277] *See* proposed rule 206(4)–3(a)(1)(iii)(F).

[278] *See* NAPFA Comment Letter; Mercer Comment Letter.

[279] MMI Comment Letter; Mercer Comment Letter.

[280] FINRA's rule 2210(d)(6) requires, among other things, that a testimonial disclose the following: (i) The fact that it may not be representative of the experience of other customers; (ii) the fact that the testimonial is no guarantee of future performance or success; and (iii) if more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial. FINRA rule 2210(d)(6)(B).

[281] For example, unlike under FINRA rule 2210, an adviser would be required to disclose the material terms of compensation for a testimonial, even where a person receives *de minimis* compensation, under the final marketing rule.

[282] *See* final rule 206(4)–1(b)(1)(i). If the promoter provides the disclosures, the investment adviser

Continued

proposed advertising rule would have required clear and prominent disclosure of: (1) Whether the testimonial or endorsement was given by a client or investor or a non-client or investor; and (2) if applicable, that compensation was provided by or on behalf of the adviser in connection with the testimonial or endorsement.[283] The proposed solicitation rule would have required that, under the terms of the written agreement, the solicitor or adviser provide the investor at the time of solicitation activities with a separate disclosure that includes, among other matters, the terms of any compensation arrangement, including a description of the compensation provided or to be provided to the solicitor, and a description of any potential material conflicts of interest on the part of the solicitor resulting from the investment adviser's relationship with the solicitor and/or the compensation arrangement.[284] In merging the two rules under the final rule, we have determined to preserve that testimonials and endorsements must provide for certain concise disclosures to be made clearly and prominently as well as for certain additional disclosures to be made at the time the testimonial or endorsement is disseminated.

We continue to believe that certain required disclosures should be made clearly and prominently to help prevent misleading testimonials and endorsements.[285] In addition to the two disclosures required under the proposed advertising rule, we also are requiring that a brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement be made clearly and prominently. In order to be clear and prominent, the disclosures must be at least as prominent as the testimonial or endorsement. In other words, we believe that the ''clear and prominent'' standard requires that the disclosures be included *within the testimonial or endorsement,* or in the case of an oral testimonial or endorsement, provided at the same time.[286]

As discussed above, many commenters requested more flexibility with respect to hyperlinked disclosures under the clear and prominent standard.[287] With respect to the disclosures for testimonials and endorsements that are subject to the clear and prominent standard, we believe such disclosures must be provided clearly and prominently within the testimonial or endorsement.[288] Specifically, we believe such disclosures should appear close to the associated statement such that the statement and disclosures are read at the same time, rather than referring the reader somewhere else to obtain the disclosures. In cases in which an oral testimonial or endorsement is provided, it would be consistent with the clear and prominent standard if the disclosures are provided in a written format, so long as they are provided at the time of the testimonial or endorsement.[289] The requirement to provide the disclosures with respect to testimonials and endorsements ''clearly and prominently'' may necessitate formatting and tailoring based on the form of the communication.[290]

However, after considering comments, we are requiring advisers to provide only certain disclosures regarding testimonials and endorsements clearly and prominently, as discussed in more detail below.[291] We believe that the disclosures required to be provided clearly and prominently are integral to the concerns associated with testimonials and endorsements in an advertisement. Our approach is consistent with the Federal Trade Commission's (''FTC'') guidance, which also requires disclosures that are integral to the claim to accompany the claim to prevent deception.[292] We also believe that these disclosures can be provided succinctly within the testimonial or endorsement such that advisers may advertise their services using modern technology and platforms that limit the size or characters of an advertisement. Moreover, we expect that succinctly providing these disclosures will promote their salience and impact. Other required disclosures, which provide investors with additional useful information but that are not integral to the concerns related to these advertisements, may be provided through hyperlinks, in a separate disclosure document or any other similar methods.

i. Status as a Client or Non-Client

Similar to what we proposed under the advertising rule, the final rule will require clear and prominent disclosure that a testimonial was given by a current client or investor, and that an endorsement was given by a person other than a current client or investor.[293] We believe that this disclosure will provide investors with important context for weighing the relevance of the testimonial or endorsement. For example, an investor might reasonably give more weight to a statement made about an adviser by a current investor rather than someone who was never an investor.[294] Additionally, without clearly attributing an endorsement to someone other than an investor, the advertisement could mislead investors who may assume the

must reasonably believe that the promoter provides such disclosures clearly and prominently. *See* final rule 206(4)–1(b)(1).

[283] *See* proposed rule 206(4)–1(b)(1).

[284] *See* proposed rule 206(4)–3(a)(1)(iii).

[285] We believe this will help reduce the risk of having misleading testimonials or endorsements in addition to the general prohibitions, which prohibit advertisements from being materially false or misleading. *See* 206(4)–1(a).

[286] *See infra* section II.C.2.f. (discussing oral testimonials and endorsements). The discussion in this section also applies to other parts of the final rule that include a clear and prominent disclosure standard, including the required disclosures related to third-party ratings and predecessor performance. Accordingly, such required disclosures should be included within the advertisement.

[287] *See* section II.B.4. (discussing commenters' concerns with respect to the clear and prominent standard). *See, e.g.,* MMI Comment Letter; T. Rowe Price Comment Letter; Fidelity Comment Letter; IAA Comment Letter.

[288] *See* final rule 206(4)–1(b)(1)(i)(A) through (C).

[289] Accordingly, in the case of a compensated oral testimonial or endorsement, the adviser may, instead of recording and retaining the entire oral testimonial or endorsement, make and keep a record of the disclosures provided to investors. *See* final rule 204–2(a)(11)(i)(A)(*2*). *See also infra* section II.C.2.f and II.I. (discussing oral testimonials and endorsements). If an adviser or promoter provides an investor with written disclosures in connection with an oral testimonial or endorsement, instead of delivering the disclosures orally, the adviser or promoter should alert the investor to the importance of the disclosures, particularly with respect to the disclosures that must be provided clearly and prominently. *See* final rule 206(4)–1(b)(1)(i). If an adviser did not inform the investor about the importance of such disclosures, it would violate the general prohibition against false or misleading statements. *See* final rule 206(4)–1(a)(1).

[290] An advertisement intended to be viewed on a mobile device, for example, may meet the standard in a different way than one intended to be seen as a print advertisement (*e.g.,* a person viewing a mobile device could be automatically redirected to the required disclosure before viewing the substance of an advertisement).

[291] *See infra* section II.C.2.a.i. through iii. (discussing status as a client or non-client, fact of compensation, and statement of material conflicts of interest).

[292] *See, e.g.,* Fidelity Comment Letter; IAA Comment Letter; SIFMA AMG Comment Letter II (suggesting that we adopt, or adopt an approach consistent with, the FTC approach to hyperlinks). *See also* Federal Trade Commission, Dot Com Disclosures Guidance Update (Mar. 2013). While the FTC guidance permits the use of hyperlinks, it generally allows the use of hyperlinks to provide disclosures that are ''not integral to the triggering claim'' and places a number of conditions on the ability to provide hyperlinks.

[293] Final rule 206(4)–1(b)(1)(i)(A). *See* proposed rule 206(4)–1(b)(1)(i). The promoter may be an entity or a natural person.

[294] Client status will be assessed at the time that a testimonial or endorsement is disseminated. However, depending on the facts and circumstances, a former client may be considered a client for these purposes. For example, if a person is giving a statement about his or her recent prior experience with the adviser, the communication could be treated as a testimonial.

endorsement reflects the endorser's experience as an investor.[295]

The proposed solicitation rule would have required disclosure of the name of the solicitor.[296] However, similar to the proposed advertising rule, the final rule will not require the disclosure of the name of the promoter.[297] We did not receive any comments on the requirement under the proposed solicitation rule to disclose the name of the solicitor. We expect that advisers may still choose to disclose the full name of the promoter because disclosing the name of the promoter could help an investor assess the reputation or other qualifications of the person. However, we believe our final approach is appropriate for privacy reasons and takes into account cases where a promoter may not wish to give his or her name.[298] We also believe that in cases where a name is not provided, the rule's general prohibitions will protect investors from fraudulent or misleading testimonials or endorsements. An investor may also give less weight to that particular testimonial or endorsement.

ii. Fact of Compensation

Similar to what we proposed under the advertising rule, the final rule will require clear and prominent disclosure that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable.[299] Similar to the disclosure of a promoter's status as a current investor or person other than a current investor, we continue to believe that this disclosure will provide investors with important context for weighing the relevance of the testimonial or endorsement. Two commenters specifically supported requiring advisers to disclose whether they paid for testimonials or endorsements under the proposed advertising rule.[300] One of these commenters stated that without requiring clear and prominent disclosure that a particular testimonial or endorsement is effectively a ''paid-for advertisement,'' investors would not be able to determine whether they are consuming an authentic, unbiased review of the adviser.[301] We agree, and we believe that this simple but clear disclosure is one that is both beneficial for investors and easy to implement for advisers, including on space-constrained platforms. For example, when providing a testimonial or endorsement on a social media platform, an adviser must clearly and prominently label the testimonial or endorsement as being a paid testimonial or endorsement.

iii. Statement of Material Conflicts of Interest

The final rule will require clear and prominent disclosure of a brief statement of any material conflicts of interest on the part of the promoter resulting from its relationship with the investment adviser.[302] Similar to the other disclosures subject to the clear and prominent standard, we expect this disclosure to be succinct. For example, it would be sufficient for an adviser to simply state that the testimonial or endorsement was provided by an affiliate of the adviser, or that the promoter is related to the adviser, if this relationship is the source of the conflict.[303]

We believe the required disclosures result in information that informs and protects investors, yet can be provided succinctly within the testimonial or endorsement. We also believe this form of layered disclosure enhances the salience of this information and may help investors better focus on the presence of conflicts of interest than requiring potentially more lengthy disclosures. We require a fuller description of any material conflicts of interests resulting from the promoter's relationship with the adviser and/or the promoter's compensation arrangement with the adviser as part of the disclosures provided with respect to testimonials or endorsements, but this is not subject to the clear and prominent standard.[304]

b. Material Terms of Compensation Arrangement

The final rule will require disclosure of the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement.[305] This provision is based on the disclosure requirement of the proposed solicitation rule. The proposed solicitation rule would have required the disclosure of the terms of any compensation arrangement, including a description of the compensation provided or to be provided to the solicitor.[306] Some commenters stated that the disclosure requirement was overbroad and unclear.[307] For instance, one commenter stated that it is unclear whether an adviser should disclose reimbursing a solicitor for third-party expenses in the solicitation process under this requirement.[308] The final rule requires disclosure of compensation provided, directly or indirectly, for the testimonial or endorsement. If payment of third-party expenses is part of the compensation arrangement for the testimonial or endorsement, then such payment should be disclosed under the final rule.

If a specific amount of cash compensation is paid, the advertisement should disclose that amount.[309] If the compensation takes the form of a percentage of the total advisory fee over a period of time, then the advertisement should disclose such percentage and time period.[310] With respect to non-cash

[295] Testimonials and endorsements are subject to the rule's general prohibitions. Whether a testimonial or endorsement would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser would depend on the facts and circumstances. For instance, it would be misleading for an adviser to provide investors with a testimonial claiming a positive experience with the adviser by a former client, without mentioning that the person has not been a client for 20 years.

[296] *See* proposed rule 206(4)–3(a)(1)(iii)(B). The proposed rule would have also required disclosure of the adviser's name. Proposed rule 206(4)–3(a)(1)(iii)(A).

[297] Final rule 206(4)–1(b)(1)(i) through (ii). The proposed advertising rule would have only required disclosure of the client or non-client status of the person providing the testimonial or endorsement and whether compensation has been provided for the testimonial or endorsement. *See* proposed rule 206(4)–1(b)(1).

[298] In the case of testimonials and endorsements where compensation paid is above the *de minimis* threshold, advisers are required to maintain a written agreement with a promoter. *See* final rule 206(4)–1(b)(2)(ii) and (b)(4)(i). In such cases, the agreement would provide a record of the name of such promoter. *See* rule 204–2(a)(10), which currently requires that advisers retain ''[a]ll written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.''

[299] Final rule 206(4)–1(b)(1)(i)(B). *See* proposed rule 206(4)–1(b)(1)(ii).

[300] Consumer Federation Comment Letter; SBIA Comment Letter.

[301] Consumer Federation Comment Letter.

[302] Final rule 206(4)–1(b)(1)(i)(C).

[303] We expect this brief statement of any material conflicts of interest to be substantially shorter than the description of any material conflicts of interest that is required, as discussed below. *See* final rule 206(4)–1(b)(1)(ii).

[304] *See* final rule 206(4)–1(b)(1)(iii).

[305] Final rule 206(4)–1(b)(1)(ii).

[306] *See* proposed rule 206(4)–3(a)(1)(iii)(D).

[307] *See, e.g.,* Comment Letter of Flexible Plan Investments, Ltd. on proposed solicitation rule (Feb. 10, 2020) (''Flexible Plan Investments Comment Letter I''); Comment Letter of Proskauer Rose LLP (Feb. 10, 2020) (''Proskauer Comment Letter'').

[308] Flexible Plan Investments Comment Letter I.

[309] This is consistent with the Commission's position regarding the disclosure requirements under the existing cash solicitation rule. *See* 1979 Adopting Release, *supra* footnote 3, at text accompanying nn.15 and 16.

[310] This is similar to the Commission's position under the existing cash solicitation rule. *See* 1979 Adopting Release, *supra* footnote 3, at text accompanying nn.15 and 16.

compensation, if the value of the non-cash compensation is readily ascertainable, the disclosures should include that amount. Moreover, if all or part of the compensation, cash or non-cash, is payable upon dissemination of the testimonial or endorsement or is deferred or contingent on a certain future event, such as an investor's continuation or renewal of its advisory relationship, agreement, or investment, then the advertisement should disclose those terms.[311]

In response to this requirement under our proposed solicitation rule, one commenter argued that requiring detailed disclosures about compensation arrangements would result in lengthy disclosures that would be confusing for, and irrelevant to, investors.[312] The commenter suggested that the rule require solicitors to disclose only that they are receiving compensation for the solicitation. This commenter stated that this disclosure would adequately alert investors to the inherent conflict of interest associated with such compensation. At the same time, several commenters considered additional compensation information about a compensated solicitor's referral, including the amount paid to the solicitor for referring the adviser, whether there would be any additional cost to the investor, and the solicitor's relationship to the adviser, ''very important.'' [313]

Although we believe that a simple disclosure that compensation was provided is sufficient for purposes of the clear and prominent disclosures, we continue to believe that the disclosure related to the terms of the compensation arrangement help convey to the investor the nature and magnitude of the person's incentive to refer the investor to the adviser.[314] The incentive might vary based on the structure of the compensation arrangement. A promoter that receives a flat or fixed fee from an adviser for a set number of referrals might have a different incentive in referring to the adviser than another that receives a fee, such as a percentage of the investor's assets under management, for each investor that becomes a client of, or a private fund investor with, the adviser. Furthermore, trailing fees (*i.e.,* fees that are continuing) that are contingent on the investor's relationship with the adviser continuing for a specified period of time present additional considerations in evaluating the promoter's incentives. It would be relevant to an investor to know that a promoter continues to receive compensation after the investor becomes a client of, or private fund investor with, the adviser, as well as the period of time over which the promoter continues to receive compensation for such solicitation. A longer trailing period can present a greater incentive to solicit the investor. In addition, if, as part of the compensation arrangement between the adviser and promoter, an investor would pay increased advisory fees for becoming a client as a result of the promoter's testimonial or endorsement, then this information would be relevant so that the investor can make such considerations when choosing an adviser.[315]

After considering comments, we are requiring that the disclosures only include the *material* terms of any compensation arrangement. Accordingly, these disclosures need not include immaterial aspects of a compensation arrangement. These disclosures also need not include detailed information about the calculation of the compensation payable to each person giving a testimonial or endorsement; they need not be lengthy to convey the magnitude and nature of the conflict. In addition, these disclosures should not include all compensation arrangements that an adviser has with any and all promoters, as one commenter suggested, but rather should include only information about the relevant compensation arrangement between an adviser and a specific promoter in order for the disclosure to be effective.[316] As modified, this provision will require disclosures about any compensation arrangement with a promoter *for its testimonial or endorsement.*

An adviser may arrange to compensate a third-party marketing company to advertise and refer potential clients to the adviser. If the compensation arrangement calls for a percentage of fees collected from the referred clients, then the disclosures should state so and describe what that percentage is. An adviser may also have a directed brokerage arrangement with a third-party brokerage firm, in which the adviser will direct brokerage to the firm as compensation for the firm's solicitation of clients for, or referral of clients to, the adviser.[317] In these cases, the adviser or firm should disclose the material terms of this arrangement, including a brief description of the compensation provided or to be provided to the firm. As part of the disclosure of the material terms of the compensation, the disclosure should state the range of commissions that the firm charges for investors directed to it by the adviser. Furthermore, if the solicitation or referral is contingent upon the firm receiving a particular threshold of directed brokerage (and other services, if applicable) from the adviser, the disclosure should say so. Additional disclosure would be required, for example, if the firm and the adviser agree that as compensation for the firm's endorsement of the adviser, the adviser's directed brokerage activities would extend to other clients such as the solicited client's friends and family.

The final rule will require the advertisement to disclose compensation that the adviser provides directly or *indirectly* to a person for a testimonial or endorsement.[318] For example, if an individual solicits an investor and the adviser compensates a related person of that individual for such solicitation (such as an employer or another entity that is associated with the individual), the adviser or individual will need to include this compensation in its disclosures. If a person, such as a broker-dealer, refers clients to advisers that recommend the broker-dealer's or its affiliate's proprietary investment products or recommend products that have revenue sharing or other pecuniary arrangements with the broker-dealer or its affiliate, the disclosures must say so.[319] Regardless of whether the adviser's arrangement is with an individual or the individual's firm, compensation to the firm for any testimonial or endorsement will constitute compensation under the rule, as it would be likely to affect the

[311] This is also similar to the Commission's position under the existing cash solicitation rule. *See* 1979 Adopting Release, *supra* footnote 3, at text accompanying nn.15 and 16.

[312] *See* Proskauer Comment Letter.

[313] *See* Investment Adviser Marketing Feedback Form.

[314] As stated in our proposal, the materiality of the incentive to solicit investors to an investor's evaluation of the referral depends on the type and magnitude of the compensation. We believe that the description of a compensation arrangement will be helpful for investors to consider the types and levels of incentives present. 2019 Proposing Release, *supra* footnote 7, at section II.B.4.

[315] If the amount of increased fees for the investor is known or could reasonably be obtained, then such amount should be disclosed as part of this requirement.

[316] Proskauer Comment Letter (stating that this requirement would result in ''very extensive'' disclosures, particularly if an adviser has multiple arrangements with multiple solicitors).

[317] Such activities will fall under the definition of endorsement.

[318] *See* final rule 206(4)–1(e)(1)(ii).

[319] *See also* Fiduciary Interpretation, *supra* footnote 88, at 23 (''an adviser must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.'').

individual's salary, bonus, commission or continued association with the firm.

c. Material Conflicts of Interest

The proposed solicitation rule would have required a description of any potential material conflicts of interest on the part of the solicitor resulting from the investment adviser's relationship with the solicitor and/or compensation arrangement.[320] We have slightly modified this proposed requirement by removing the word ''potential'' from ''potential material conflicts of interest,'' as discussed in detail below. Accordingly, the final rule will require a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.[321]

One commenter to the proposed advertising rule requested that we broaden the disclosure provision and require disclosure of all ''material connections,'' stating that there are types of connections besides the fact of compensation that could ''materially affect the weight or credibility'' of a testimonial or endorsement.[322] With respect to the proposed solicitation rule requirement, some commenters supported making clear to investors that a conflict of interest may result from an adviser's relationship with the solicitor and/or their compensation arrangement.[323] Others stated that the disclosure of potential material conflicts of interest would likely be redundant with the required disclosure of the terms of any compensation arrangement.[324] Commenters also argued that such a requirement would result in disclosure that is too lengthy without much benefit.[325] These commenters stated that registered investment advisers and broker-dealers who act as solicitors are already subject to similar disclosure obligations under Form ADV Part 2 and Regulation BI, respectively.[326]

We believe our modification of removing the word ''potential'' from the proposed requirement will help reduce the burden on advisers as well as the length of the disclosures without eliminating any material information provided to investors. We do not believe the compensation arrangement disclosure alone is sufficient as it merely implies the conflict. Rather, there should be explicit disclosure that the promoter, due to such compensation, has an incentive to recommend the adviser, resulting in a material conflict of interest. Additionally, we believe a promoter could have other material conflicts of interest based on a relationship with the investment adviser that could affect the credibility of the testimonial or endorsement. Accordingly, to the extent that there is *any* material conflict of interest, the rule will require a description of such material conflict of interest.

We recognize that persons who are also registered as investment advisers or broker-dealers have other disclosure obligations relating to conflicts of interest, such as the requirements of Form ADV.[327] We do not believe that disclosures provided in Form ADV would sufficiently satisfy this provision. For example, although Form ADV Part 2 requires disclosure of material conflicts of interest, the disclosure required by the form is limited to conflicts related to relationships with specific personnel such as the adviser's supervised persons and related persons.[328] Moreover, we do not believe that an adviser that is acting as a promoter would be required to deliver its Form ADV Part 2 to a person the adviser was soliciting to become a client of another investment adviser. On the other hand, in circumstances where Regulation BI applies to a broker-dealer's activity as a promoter, we believe the Disclosure Obligation under Regulation BI is sufficiently similar to satisfy the disclosure provisions under our final rule.[329] Accordingly, as discussed below, we are adopting a partial exemption from the final rule's required disclosures in certain circumstances.[330]

We had proposed under the solicitation rule to require disclosure of the amount of any additional cost to the investor as a result of the testimonial or endorsement. We did not receive any comments on this proposed requirement. After further contemplation, we believe that such a requirement under the final rule, which would apply to all testimonials and endorsements, would create burdens that are not commensurate with the benefits of the disclosure and are accordingly eliminating this requirement.[331] Such costs could vary by client and over time, making it difficult for advisers to disclose concisely in an advertisement. Moreover, to the extent that an adviser knows or reasonably should know that an investor would pay increased advisory fees as a result of its compensation arrangement or relationship with a promoter, then such disclosures would be made under another provision of the rule as discussed above.[332]

d. Reasonable Belief

Under the final rule, an adviser that does not provide the required

[320] Proposed rule 206(4)–3(a)(1)(iii)(E).

[321] Final rule 206(4)–1(b)(1)(iii). The materiality standard applies to the investor(s) being solicited by the promoter. In other words, if an investor would consider a particular conflict of interest on the part of the promoter to be material to his or her decision to choose an investment adviser, then such conflict of interest should be disclosed.

[322] *See* TINA Comment Letter.

[323] *See* Proskauer Comment Letter; Mercer Comment Letter.

[324] *See, e.g.,* MFA/AIMA Comment Letter I.

[325] *See, e.g.,* Fidelity Comment Letter.

[326] *See, e.g.,* Fidelity Comment Letter, which also stated that Form CRS would be an additional place where investors may find similar information.

[327] Such persons would also have disclosure obligations under the anti-fraud provisions of the Federal securities laws. If a person meets the definition of ''investment adviser,'' as defined under section 202(a)(11) of the Advisers Act, such person has a fiduciary duty to clients, regardless of whether the adviser is registered or required to be registered, and is thus liable under the anti-fraud provisions of the Advisers Act and other Federal securities laws for failure to disclose conflicts of interest.

[328] *See, e.g.,* Item 4.A. of Form ADV, Part 2 (requires disclosure if a relationship between adviser and supervised person's other financial industry activities creates a material conflict of interest with clients); Item 5.E of Form ADV, Part 2 (requires disclosure of conflict of interest to the extent that the adviser or any of its supervised persons accepts compensation for the sale of securities or other investment products); Item 10.C. of Form ADV, Part 2 (requires description of material conflict of interests with related persons, as defined in Form ADV, and only if the relationship or arrangement with the related person creates a material conflict of interest with clients); Item 10.D. of Form ADV, Part 2 (requires disclosure of material conflict of interest if the adviser receives compensation from or has other business relationships with other advisers).

[329] The Disclosure Obligation requires that a broker-dealer disclose in writing all material facts about the scope and terms of its relationship with a retail customer, including the material fees and costs the customer will incur as well as all material facts relating to its conflicts of interest associated with the recommendation, including third-party payments and compensation arrangements. *See* Regulation Best Interest Release, *supra* footnote 146, at 14. *See also infra* section II.C.5. (discussing exemptions).

[330] *See infra* section II.C.5. (discussing exemptions). To the extent that a broker-dealer's testimonial or endorsement under rule 206(4)–1 is a recommendation to a retail customer of a securities transaction or investment strategy involving securities by a broker-dealer, the Disclosure Obligation under Regulation BI would apply to the broker-dealer's testimonial or endorsement.

[331] This will be a change from the current solicitation rule's requirement that the solicitor state whether the client will pay a specific fee to the adviser in addition to the advisory fee, and whether the client will pay higher advisory fees than other clients (and the difference in such fees) because the client was referred by the solicitor. *See* current rule 206(4)–3(b)(6).

[332] *See* section II.C.2.b. (discussing material terms of compensation arrangement disclosure).

disclosures must reasonably believe that the promoter discloses the required information. We proposed a reasonable belief standard under the advertising rule and continue to believe that the standard is appropriate in ensuring that the required disclosures are provided.[333]

To have a reasonable belief, an adviser may provide the required disclosures to a promoter and seek to confirm that the promoter provides those disclosures to investors. For example, if a blogger or social media influencer is endorsing and referring clients to the adviser through his or her website or platform, the adviser may provide such blogger or influencer with the required disclosures and confirm that they are provided appropriately on his or her respective pages. The adviser may choose to include provisions in its written agreement with the promoter, requiring the promoter to provide the required disclosures to investors.[334] The aforementioned ways are only examples of how an adviser may demonstrate that it has a reasonable belief.

e. Timing of Disclosures

Under the final rule, the required disclosures with respect to testimonials and endorsements must be delivered at the time the testimonial or endorsement is disseminated.[335] The proposed solicitation rule would have required delivery of a separate solicitor disclosure at the time of any solicitation activities (or in the case of a mass communication, as soon as reasonably practicable thereafter).[336] Given that the final rule requires certain disclosures to be included within the testimonial or endorsement per the clear and prominent standard, rather than delivered separately, as discussed below, we are not adopting the proposed alternative to provide the disclosures as soon as reasonably practicable thereafter in the case of mass communications.

We continue to believe the timing of disclosures is important.[337] If the disclosures are not provided at the time the testimonial or endorsement is disseminated, many of the disclosures may not have the same impact on investors.[338] Some commenters to the proposed solicitation rule suggested that the rule require delivery of solicitor disclosure after a prospective client expresses interest in the adviser's services or becomes a client of the adviser, rather than at the time of solicitation.[339] We decline to make this change as we continue to believe these disclosures should be provided at the time of dissemination of the testimonial or endorsement to protect against investor confusion.[340]

f. No Separate Disclosure Requirement

We are not adopting the proposed requirement for a separate solicitor's disclosure.[341] In light of the merger of the advertising and solicitation rules, we believe that requiring certain disclosures be provided clearly and prominently within the testimonial or endorsement, and other disclosures be otherwise provided, is a more practical and effective approach to informing investors and clients.[342] For example, if an adviser compensates a podcast host for endorsing the adviser in its podcast or as an advertisement during the podcast, including certain of the required disclosures in the podcast itself would give greater prominence to these disclosures and have a greater impact on the potential investor than a separate disclosure document with all of the required disclosures.

Commenters raised concerns about separate solicitor disclosure, noting that the extra documentation would burden investment advisers and overwhelm clients.[343] These commenters also suggested providing flexibility to include the disclosures within other solicitation materials or incorporating the solicitor disclosure into other required disclosures, such as the Form ADV Part 2A. We believe that it would reduce the effectiveness of the disclosures for testimonials and endorsements to allow them all to be included within other solicitation materials given our view that particular disclosures should be provided clearly and prominently.

In a change from the proposal, the final rule will not permit the delivery of the solicitor disclosure as soon as reasonably practicable after the time of any solicitation activities in the case of a mass communication. We believe that the changes under the final rule, such as the elimination of a separate disclosure requirement, eliminate the need to provide a different delivery requirement for the required disclosures. In fact, as noted above, we believe that the required disclosures should be provided at the time that such testimonial or endorsement is disseminated in all cases in order to have a meaningful impact on investors.

Under the proposed solicitation rule, either the adviser or the solicitor would have been able to give the disclosures. Commenters generally supported this flexibility.[344] Accordingly, under the final rule, either the adviser or the promoter may provide the required disclosures, subject to the other conditions of the rule.[345] We do not believe the impact of the disclosures will be undermined by permitting either

[333] *See* proposed rule 206(4)–1(b)(1) and (2) (each requiring a reasonable belief standard for investment advisers). *See also* proposed rule 206(4)–3(a)(2) (requiring a reasonable basis for believing that solicitor has complied with the written agreement requirement).

[334] *See* final rule 206(4)–1(b)(2)(ii). To the extent that the promoter's testimonial or endorsement falls under the *de minimis* exemption, advisers would not be required to, but may choose to, enter into a written agreement and include such provisions. Final rule 206(4)–1(b)(2)(ii) and (b)(4)(i).

[335] Final rule 206(4)–1(b)(1). This is similar to the existing cash solicitation rule, which requires that the solicitor disclosure be delivered at the time of any solicitation activities. *See* current rule 206(4)–3(a)(2)(iii)(A).

[336] Proposed rule 206(4)–3(a)(1)(iii).

[337] The timing for several aspects of the proposed solicitation rule was ''at the time'' of solicitation. *See* 2019 Proposing Release, *supra* footnote 7, at section II.B.4 (discussing solicitor disclosure), section II.B.5. (discussing written agreement), section II.B.6. (discussing adviser oversight and compliance) and section II.B.7 (discussing disqualification).

[338] The current solicitation rule requires that the solicitor deliver the solicitor disclosure ''at the time of any solicitation activities.'' Rule 206(4)–3(a)(2)(ii).

[339] *See* IAA Comment Letter; Flexible Plan Investments Comment Letter I (''. . . delivery should simply be required before the recipient of the solicitation or referral becomes a client of the adviser.''); Nesler Comment Letter.

[340] The exemption for broker-dealers subject to Regulation BI would allow for the related disclosures to be provided prior to or at the time of a recommendation, which may, in some cases, precede a particular testimonial or endorsement for private fund investors. However, unless the broker-dealer had made previous recommendations subject to Regulation BI to the investor, the testimonial or endorsement would likely be the first time the investor is receiving the disclosure. *See* Regulation Best Interest Release, *supra* footnote 146 (''Broker-dealers could meet the Disclosure Obligation by making certain required disclosures of information regarding conflicts of interest to their customers at the beginning of a relationship, and this form of disclosure may be standardized. However, if standardized disclosure, provided at such time, does not sufficiently identify the material facts relating to conflicts of interest associated with any particular recommendation, the disclosure would need to be supplemented so that such disclosure is tailored to the particular recommendation.'').

[341] *See* proposed rule 206(4)–3(a)(1)(iii). The current solicitation rule also requires delivery of a separate disclosure.

[342] *See* final rule 206(4)–1(b)(1)(i). *See also* section II.C.2.a. (discussing clear and prominent standard).

[343] *See, e.g.,* MFA/AIMA Comment Letter I; SIFMA AMG Comment Letter I (responding to our request for comment in the Proposing Release as to whether the disclosure should be separate, as proposed).

[344] *See, e.g.,* SIFMA AMG Comment Letter I; IAA Comment Letter.

[345] *See* final rule 206(4)–1(b)(1). This is also similar to the proposed advertising rule, which required that the investment adviser clearly and prominently disclose *or* reasonably believe that the testimonial or endorsement clearly and prominently disclosed certain information. *See* proposed rule 206(4)–1(b)(1).

the adviser or the promoter to provide the disclosures.

Our final rule does not require an adviser or promoter to present the required disclosures in paper.[346] One commenter stated that an investor would not grasp the importance of the disclosure if it is not in a paper document.[347] We disagree that electronic or oral communication cannot be effective. We believe that providing flexibility regarding disclosure format is necessary to allow the disclosures to be provided at the time of dissemination of a testimonial or endorsement. We also believe that our adopted disclosure requirements will be adaptable to different types of testimonial and endorsement arrangements. Because disclosures must be clear and prominent, the final rule mitigates concerns that investors will not read or hear electronic disclosures.

Regardless of the format, the adviser will be required, under the Act's books and records rule, to make and keep true, accurate, and current copies of the advertisement.[348] In some circumstances, a copy of the advertisement (*i.e.,* the testimonial or endorsement) may include all of the required disclosures with respect to the testimonial or endorsement.[349] In the case of a compensated oral testimonial or endorsement, the adviser may, instead of recording and retaining the entire oral testimonial or endorsement, make and keep a record of the disclosures provided to investors.[350] Additionally, in response to one commenter,[351] we are clarifying that if an adviser disseminates the required disclosures orally in connection with an oral testimonial or endorsement, the adviser may choose, consistent with applicable law, to record the oral disclosures either prior to or at the time of the dissemination of the testimonial or endorsement.[352]

3. Adviser Oversight and Compliance

All testimonials and endorsements, including those that are compensated and those that are uncompensated and meet prong one of the definition of advertisement, will be subject to an adviser oversight and compliance provision under the final rule.[353] The final rule will require the investment adviser to have: (i) A reasonable basis for believing that any testimonial or endorsement complies with the requirements of the rule, and (ii) a written agreement with any person giving a compensated testimonial or endorsement that describes the scope of the agreed upon activities and the terms of the compensation for those activities when the adviser is providing compensation for testimonials and endorsements that is above the *de minimis* threshold.[354] The oversight requirement we are adopting is similar to the proposed oversight requirement and the current solicitation rule's oversight requirement, but differs in several respects to address commenters' concerns and to reflect the merger of the two rules.[355]

First, the adviser oversight condition will require that the adviser have a reasonable basis for believing that the testimonial or endorsement complies with the requirements of the final rule, rather than the terms of a written agreement as proposed. The proposal would have replaced the solicitation rule's current requirement that the written agreement contain an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the provisions of the Act and the rules thereunder with the requirement that the solicitor agree to perform its solicitation activities in accordance with sections 206(1), (2), and (4) of the Act.[356] We believe that explicitly requiring advisers to oversee third-party advertisements for compliance with the specific restrictions and requirements in the marketing rule, rather than the broader anti-fraud provisions, more appropriately and precisely addresses the risks posed by such advertisements.

The question of what would constitute a reasonable basis for believing that the testimonial or endorsement complies with the requirements of the final rule would depend upon the facts and circumstances. For instance, in the context of solicitation or referral activity, we believe that, as under the solicitation rule, a reasonable basis could involve periodically making inquiries of a sample of investors solicited or referred by the promoter in order to assess whether that promoter's statements comply with the rule.[357] An adviser could implement policies and procedures to form a reasonable basis for believing the testimonial or endorsement complies with the rule. An adviser also could include terms in its written agreement with the promoter to help form such a reasonable belief. Such agreements could provide mechanisms, for example, to enable advisers to pre-review testimonials or endorsements, or otherwise impose limitations on the content of those statements.[358]

Second, the final rule will require that an adviser pay any compensation over

[346] If the disclosures are made in writing, we have stated that an ''in writing'' requirement could be satisfied either through paper or electronic means consistent with existing Commission guidance on electronic delivery of documents. *See* Regulation Best Interest Release, *supra* footnote 146, at text accompanying nn.499–500. If delivery of the required disclosure is made electronically, it should be done in accordance with the Commission's guidance regarding electronic delivery. *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Release No. 34–37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]; *see also* 2000 Release, *supra* footnote 43; and *see also* 1995 Release, *supra* footnote 43.

[347] *See* NASAA Comment Letter (''Emails, text messages, instant messages, electronic presentations, videos, podcasts, and other modern methods of communications . . . do not adequately ensure that the investor will read, hear, or understand the importance of the disclosures. Furthermore, these and similar electronic communications are ill-suited to allowing the client to retain a copy of the disclosure in a form and location that can easily be recalled when necessary.'').

[348] To the extent that a testimonial or endorsement is disseminated by an adviser indirectly through a third party, an adviser should retain such records as well. *See* final rule 204–2(a)(11)(i)(A), which requires that advisers retain a copy of each advertisement.

[349] In addition to the disclosures that are required to be provided clearly and prominently within the testimonial or endorsement, an adviser may choose to provide the other disclosures that are not subject to the clear and prominent standard within the testimonial or endorsement. *See supra* section II.C.2.a. (discussing clear and prominent standard). In circumstances in which an adviser does not provide the other disclosures within the advertisement, an adviser would be required to maintain such disclosures under the recordkeeping rule. *See* final rule 204–2(a)(15)(i).

[350] *See* final rule 204–2(a)(11)(i)(A)(*2*). If the required disclosures are provided in a written format, then only the written disclosures would need to be maintained. If the required disclosures are provided orally, however, this record need not necessarily be an actual recording of the oral disclosures provided, but must contain the fact that the oral disclosures were provided, the substance of what was provided, and when.

[351] *See* Nesler Comment Letter (asking the Commission to clarify that if disclosures are provided orally, such disclosure in oral form needs to be recorded prior to being provided to a client, and not at the time it is provided to the client).

[352] In order to avoid duplicative records, advisers may maintain records of a script or reading of a script of disclosures provided orally.

[353] Final rule 206(4)–1(b)(2) and (4).

[354] Final rule 206(4)–1(b)(2).

[355] *See* current rule 206(4)–3(a)(2)(iii)(C) (requiring that the investment adviser make a bona fide effort to ascertain whether the solicitor has complied with the agreement, and have a reasonable basis for believing that the solicitor has so complied.).

[356] *See* rule 206(4)–3(a)(2)(iii)(C).

[357] 1979 Adopting Release, *supra* footnote 3, accompanying nn.14 and 15.

[358] However, the oversight requirement contains two prongs with separate obligations. Although certain mechanisms in the written agreement, if implemented, could lead the adviser to have a reasonable basis for believing that any testimonial or endorsement complies with the requirements of the rule, having a written agreement by itself would not satisfy the first prong of the oversight requirement.

the *de minimis* threshold for a testimonial or endorsement pursuant to a written agreement with the person (aside from certain affiliates) giving the testimonial or endorsement. As proposed, the final rule will require that the written agreement describe the scope of the agreed upon activities and the terms of the compensation for those activities. Also as proposed, the final rule will not require that the written agreement require the promoter to deliver the adviser's brochure. We continue to believe that this requirement is duplicative of an adviser's delivery obligation under rule 204–3, the Act's brochure rule.

The final rule, however, will not require that the written agreement require the promoter to deliver a separate written disclosure document as proposed (and as required under the current solicitation rule).[359] Instead we are requiring advertisements that include testimonials or endorsements to provide certain disclosures at the time they are disseminated. Thus, we do not believe the rule should also prescribe in the written agreement that these disclosures are delivered in a separate document.[360] In many cases, we believe the adviser itself will be providing the disclosures. Therefore, this approach will provide the adviser with flexibility in determining whether and how to address these disclosures in its written agreement with a promoter.

Consistent with the final rule's principles-based approach, this streamlined requirement provides more flexibility for an adviser to determine how to tailor its written agreement with its promoters.[361] We believe that advisers are better situated to tailor their oversight approach based on the types of testimonials and endorsements used and the risks in their particular arrangements. For the same reasons, as proposed, the final rule will not incorporate the current solicitation rule's requirement for the adviser to obtain a signed and dated acknowledgment from the client that the client has received the required disclosure.[362] This principles-based approach is consistent with the Act's compliance rule, which requires advisers to adopt and implement compliance policies and procedures, but does not mandate specific elements of such policies and procedures.[363]

One commenter supported a flexible and principles-based approach to adviser oversight.[364] Several commenters supported our proposed approach to streamline the required provisions of the written agreement, such as by removing the provision requiring the solicitor to deliver the adviser's brochure.[365] Another commenter opposed the proposed requirement that the written agreement require the adviser to oversee the solicitor for compliance with the Act's anti-fraud provisions, arguing that this is a regulatory function, not an advisory function.[366] Some commenters also specifically supported removing the current rule's requirement that an adviser obtain a signed and dated acknowledgment.[367] Two commenters, however, opposed the proposed oversight requirement, arguing that it would be burdensome and overbroad to require the adviser to oversee compliance with a written agreement.[368] One commenter argued that it would impose a new monitoring cost on advisers, which they will ultimately pass along to investors.[369] Another commenter claimed that requiring advisers to contact a sample of clients to ascertain whether solicitors were complying with the written solicitation agreement would be awkward and burdensome.[370]

We believe the modifications to the adviser oversight condition discussed above address commenters' concerns. These changes are consistent with our overall approach to shift to a principles-based rule and leverage the Act's existing compliance rule.[371] We disagree with commenters' assertion that this oversight requirement imposes a novel burden on advisers or is not an advisory function, considering the current solicitation rule's oversight provision and the Advisers Act compliance rule. We continue to believe that the oversight provision will protect investors' interests by requiring advisers to monitor third-party statements that constitute adviser advertisements (whether compensated or uncompensated) for compliance with the rule's requirements, especially when the adviser does not disseminate the testimonials or endorsements directly.[372]

4. Disqualification for Persons Who Have Engaged in Misconduct

The final marketing rule prohibits an adviser from compensating a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated.[373] Under the final rule, an ''ineligible person'' is a person who is subject either to a ''disqualifying Commission action'' or to any ''disqualifying event,''[374] and, as discussed below, certain of that person's employees and other persons associated with an ineligible person.

The final marketing rule's disqualification provisions follow a structure similar to the proposed solicitation rule's disqualification provisions, with the following changes. First, to reflect the incorporation of solicitation and referral activities into the final marketing rule's definitions of endorsements and testimonials, the final rule applies the disqualification provisions to persons providing compensated testimonials and endorsements (*i.e.,* compensated promoters). Second, under the final rule, certain Commission cease and desist orders will be disqualifying events (rather than disqualifying Commission actions, as proposed), and compensated promoters subject thereto may be eligible for the final rule's conditional carve-out applicable to disqualifying events. Third, the final rule conforms the proposed ten-year lookback period across all disqualifying events, aligning to advisers' disciplinary

[359] *See* rule 206(4)–3(a)(2)(iii); *see* proposed rule 206(4)–3(a)(1).

[360] *See supra* section II.C.2.f.

[361] For example, the written agreement requirement could be met through a written private placement agreement that describes the scope of the agreed upon activities and the terms of the compensation for those activities.

[362] *See* rule 206(4)–3(a)(2)(iii)(B).

[363] Under the compliance rule, each adviser that is registered or required to be registered under the Act is required to adopt and implement written policies and procedures reasonably designed to prevent the adviser and its supervised persons from violating the Advisers Act and the rules thereunder. Rule 206(4)–7. *See* 2019 Proposing Release, *supra* footnote 7, at section II.B.6. Advisers should address their marketing practices in their policies and procedures under the compliance rule.

[364] MFA/AIMA Comment Letter I.

[365] Mercer Comment Letter; SIFMA AMG Comment Letter II; Nesler Comment Letter; IAA Comment Letter.

[366] Mercer Comment Letter.

[367] MFA/AIMA Commenter Letter I; SIFMA AMG Comment Letter II.

[368] Mercer Comment Letter; SIFMA AMG Comment Letter II.

[369] SIFMA AMG Comment Letter II.

[370] Mercer Comment Letter.

[371] Rule 206(4)–7. *See* Compliance Programs of Investment Companies and Investment Advisers, Release No. IA–2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Compliance Program Adopting Release'').

[372] In addition, any endorsements and testimonials by third parties that are advertisements, or are part of an advertisement, will be subject to the recordkeeping obligations of rule 204–2, as discussed below. *See infra* section II.I.

[373] Final rule 206(4)–1(b)(3).

[374] Final rule 206(4)–1(e)(9). *See* final rule 206(4)–1(e)(3) and (4) for the defined terms ''disqualifying Commission action'' and ''disqualifying event.''

disclosure reporting on Form ADV Part 1A.[375] Fourth, the final rule's definition of ineligible person will not apply to certain control affiliates of the ineligible person. Fifth, the final rule will exempt from the disqualification provisions compensated promoters that are broker-dealers registered with the Commission in accordance with section 15(b) of the Exchange Act, provided that they are not subject to statutory disqualification as defined in the Exchange Act. It will also exempt any person covered by rule 506(d) of Regulation D with respect to a rule 506 securities offering, provided the person's involvement would not disqualify the offering under that rule.[376]

Commenters generally supported the disqualification of compensated promoters that are ''bad actors,'' noting the importance of protecting investors from their influence in soliciting clients or investors for investment advisers.[377] We believe compensated testimonials and endorsements raise the same concerns about misleading investors as compensated solicitations, and the final rule treats solicitations within the scope of the terms testimonial and endorsement. We are therefore adopting a final rule that prohibits advisers from compensating bad actors for testimonials and endorsements, including solicitations.

We did not propose, and we are not adopting, disqualification provisions for providers of *uncompensated* testimonials and endorsements. It has been, and continues to be, our view that the disqualification provisions are needed most where there are financial incentives for a promoter to engage in fraudulent conduct to persuade an investor to hire an investment adviser or invest in an investment adviser's private fund.[378] For testimonials and endorsements that lack financial incentives, we believe the burden of assessing whether a promoter is disqualified would likely not be justified by the risk that the promoter would engage in fraudulent conduct. We believe that the final rule's other provisions applicable to testimonials and endorsements (*i.e.,* required disclosures and adviser oversight and compliance), in combination with the final marketing rule's general prohibitions, are sufficient to address the risks that *uncompensated* testimonials and endorsements may present in misleading investors.

Some commenters recommended that the proposed solicitation rule exempt registered broker-dealers altogether, stating that applying the rule to broker-dealers would result in duplicative regulation.[379] Some also recommended that the Commission conform the final rule to the disqualifying events set forth in rule 506(d) of Regulation D under the Securities Act[380] for solicitors of investors in private funds who would be newly subject to the solicitation rule, or that we provide an exemption from the final rule's disqualification provisions for persons that are subject to rule 506 of Regulation D.[381] They stated that having one set of disqualifying events for solicitors that are subject to both the final solicitation rule and rule 506 of Regulation D would streamline compliance processes for such solicitors.

As discussed below, we agree that registered broker-dealers acting as compensated promoters need not be subject to the disqualification provisions of both the Advisers Act marketing rule and the Exchange Act.[382] Accordingly, the final rule contains an exemption from the disqualification provisions for registered broker-dealers, provided they are not subject to a statutory disqualification under the Exchange Act's disqualification provisions. We similarly agree that persons covered by rule 506(d) of Regulation D with respect to a rule 506 securities offering need not be subject to both the disqualification provisions of the Advisers Act marketing rule and the bad actor disqualification provisions of rule 506 of Regulation D with respect to their participation in the offering.[383] Accordingly, the final rule also contains an exemption from the disqualification provisions for any person that is covered by rule 506(d) of Regulation D with respect to a rule 506 securities offering, provided the person's involvement would not disqualify the offering under that rule.[384] This exemption applies to persons covered by rule 506(d) of Regulation D only to the extent they are acting thereunder in a rule 506 securities offering. For example, a broker-dealer acting as a placement agent for a private fund in a rule 506 securities offering that is covered by this exemption will only be covered with respect to the broker-dealer's testimonials and endorsements made in its capacity under rule 506(d) of Regulation D as part of the offering.

While we believe these exemptions will avoid regulatory overlap that would yield little benefit, we recognize that each disqualification regime is unique and will apply differently to compensated promoters regulated thereunder.[385] Because each

[375] Commenters' requests for not applying the proposed rule to certain existing solicitation arrangements are addressed in a separate section, below.

[376] *See* rule 506(d) of Regulation D under the Securities Act (''rule 506(d) of Regulation D''). Consistent with the approach discussed below, the final rule's disqualification provision, paragraph (b)(3), will not disqualify any broker-dealer or any covered person for purposes of the final rule for any matter(s) that occurred prior to the effective date of the rule, if such matter(s) would not have disqualified such person under rule 206(4)–3(a)(1)(ii), as in effect prior to the effective date of the rule. *See infra* section II.C.4.f.

[377] *See* NAPFA Comment Letter; NRS Comment Letter; MFA/AIMA Comment Letter I; IAA Comment Letter; SIFMA AMG Comment Letter I; MMI Comment Letter; Consumer Federation Comment Letter. Some commenters, however, disagreed with particular aspects of the proposed disqualification provisions, discussed below.

[378] *See* 2019 Proposing Release, *supra* footnote 7, at text accompanying nn.26–27.

[379] *See e.g.,* MFA/AIMA Comment Letter I; Sidley Austin Comment Letter; SIFMA AMG Comment Letter I. *See also infra* section II.C.5, which discusses commenters' concerns about overlapping requirements for broker-dealers, particularly with respect to disclosures. One commenter stated that most solicitors who place private fund interests are broker-dealers already subject to the statutory disqualifications in section 3(a)(39) of the Exchange Act, but did not comment on the comparability of the statutory disqualification provisions. *See* IAA Comment Letter.

[380] *See* rule 506(d) of Regulation D.

[381] *See* MMI Comment Letter; SIFMA AMG Comment Letter I & III; FSI Comment Letter; Credit Suisse Comment Letter. Another alternative that commenters suggested was codification of existing no-action letters for broker-dealers and other solicitors. *See infra* section II.C.4.e (discussing the final rule's conditional exception from the definition of disqualifying event).

[382] *See infra* section II.C.5.c. (discussing that broker-dealers are subject to disqualification for a variety of misconduct under the Exchange Act section 3(a)(39), that the Exchange Act is particularized to broker-dealer activity, and that we believe such disqualification provisions will serve the same policy goal as the disqualification provisions under this rule).

[383] *See id.* (discussing that these covered persons are subject to disqualification for a variety of misconduct under rule 506(d) of Regulation D, that rule 506(d) of Regulation D is particularized to activities in connection with certain securities offerings, and that we believe such disqualification provisions will serve the same policy goal as the disqualification provisions under this rule).

[384] Final rule 206(4)–1(b)(4)(iv). *See* rule 506(d)(1) of Regulation D. *See also infra* section II.C.5.

[385] For example, the final rule's disqualification provisions and rule 506 of Regulation D apply to certain Commission orders that restrict a person's activities (*e.g.,* supervisory or compliance bars or suspensions), whereas the Exchange Act's disqualification provisions do not. *See, e.g.,* final rule 206(4)–1(e)(3); rule 506(d)(1)(ii); section 3(a)(39) of the Exchange Act. In addition, the Exchange Act disqualification provisions are triggered by activities of employees and other associated persons, similar to the final rule's application to ''ineligible persons,'' but rule 506 of Regulation D is triggered by events involving partners, directors, and certain officers, but not other employees or associated persons. *See* final rule 206(4)–1(e)(9)(i)(A); rule 506(d)(1); section 3(a)(39)(E) of the Exchange Act. As another example, while the look-back periods under the final rule and the Exchange Act's statutory disqualification extend for ten years, some of the look-back periods under rule 506 of Regulation D extend for ten years, and others extend only for five

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disqualification regime is particularized to the activity thereunder, our final rule's exemptions defer to these other disqualification provisions where applicable.

a. Knowledge or Reasonable Care Standard

No commenters objected to the proposed solicitation rule's introduction of a knowledge or reasonable care standard for the disqualification provisions, which we proposed to replace the current solicitation rule's strict liability standard.[386] One commenter specifically supported the proposed standard.[387] Others commented on the proposal's requirement that an adviser make the assessment about a solicitor's eligibility status ''at the time of solicitation.'' [388] One commenter supported this timing,[389] while another commenter stated that this timing would present an undue burden on advisers that may interpret the provision as requiring continuous monitoring of their solicitors.[390] Another commenter agreed with the Commission's approach in the proposal to not prescribe the level, method, or frequency of required due diligence.[391]

We continue to believe that including a reasonable care standard preserves the benefits of a disqualification provision, while reducing the likelihood that advisers will inadvertently violate the provision (*i.e.,* due to disqualifying events that they would not, even in the exercise of reasonable care, have known existed). Our final marketing rule generally maintains the proposed solicitation rule's knowledge or reasonable care standard with one modification to reflect its application to compensated testimonials and endorsements.[392] Instead of tying the standard to the ''time of solicitation,'' the final marketing rule ties it to the time the compensated endorsement or testimonial is disseminated.[393] We believe this timing is appropriate because it mirrors the timing of the final marketing rule's required disclosures for testimonials and endorsements.[394] Furthermore, we believe that the time of dissemination is often when a compensated testimonial or endorsement by a bad actor could mislead a client or investor. For example, if a person provides a compensated testimonial or endorsement of an adviser in a face-to-face meeting with a potential advisory client, the time of dissemination (*i.e.,* the meeting) is the point at which the client could be misled.

In some instances, an adviser may be obligated to compensate the promoter for a period after the dissemination of a testimonial or endorsement. For example, a promoter may continue to receive trailing compensation as a percentage of a client's assets under management with the adviser for the duration of time that client continues to use the adviser. If a compensated promoter was subject to a disqualifying event or disqualifying Commission action at the time of dissemination, but the adviser did not know, or have reason to know, of such event, then the adviser may make trailing payments resulting from such dissemination.[395]

The final marketing rule will not require an adviser to monitor the eligibility of compensated promoters on a continuous basis, as one commenter suggested. The frequency with which an adviser must monitor eligibility and the steps an adviser must take in making this assessment will vary depending on what constitutes the exercise of reasonable care in a particular set of facts and circumstances. Advisers could likely take a similar approach to monitoring promoters as they take in monitoring their own supervised persons, though advisers may assess the eligibility of their supervised persons more frequently in light of their obligations to report promptly certain disciplinary events on Form ADV.[396]

The frequency of inquiry could vary depending upon, for example, the risk that a person could become an ineligible person and the impact of other screening and compliance mechanisms already in place.[397] In some cases where an endorsement or testimonial is posted on a public website and disseminated over a long period, it may not be practical for an adviser to update its inquiry continuously. In this case, we would expect an adviser to update its inquiry into the compensated promoter's eligibility at least annually while the endorsement or testimonial is available to clients and investors in order to demonstrate that it did not know, or have reason to know, that the promoter was ineligible at the time of dissemination.[398] If the adviser has reason to believe that the compensated promoter is an ineligible person, then the exercise of reasonable care would require the adviser to inquire promptly

years. *See, e.g.,* final rule 206(4)–1(e)(4); rule 506(d)(1)(i) and (ii); section 3(a)(39)(F) of the Exchange Act.

[386] *See* 2019 Proposing Release, *supra* footnote 7, at text accompanying n.456. Under the proposed solicitation rule, an adviser could not compensate a solicitor, directly or indirectly, for any solicitation activity if the adviser knows, or, in the exercise of reasonable care, should have known, that the solicitor is an ineligible solicitor. *See* proposed rule 206(4)–3(a)(3).

[387] *See* NRS Comment Letter.

[388] *See* NAPFA Comment Letter; FSI Comment Letter; MFA/AIMA Comment Letter I. Under the proposed solicitation rule, the definition of ''ineligible solicitor'' meant, in part, ''[a] person who *at the time of the solicitation* is subject to a disqualifying Commission action or is subject to any disqualifying event.'' Proposed rule 206(4)–3(a)(3)(ii)(A).

[389] *See* NAPFA Comment Letter.

[390] *See* MFA/AIMA Comment Letter I (stating that a requirement to make an assessment at the time of solicitation would exceed the ''reasonable care'' standard).

[391] *See* FSI Comment Letter.

[392] The proposed solicitation rule defined ''ineligible solicitor'', in part, as a person who ''at the time of the solicitation'' is subject to a disqualifying Commission action or is subject to any disqualifying event. *See* proposed rule 206(4)–3(a)(3)(ii)(A).

[393] *See* final rule 206(4)–1(b)(3). The final marketing rule also moves the timing of the reasonable care requirement to the operative disqualification provision, instead of including it within the definition of ''ineligible person.'' *See id.*

[394] Final rule 206(4)–1(b)(1). *See supra* section II.C.2.

[395] Under the final marketing rule, an adviser may pay trailing compensation for solicitations that were made prior to the marketing rule's effective date, provided the adviser complied with rule 206(4)–3 as in effect at the time. For example, if a solicitor was not disqualified under rule 206(4)–3 at the time of a solicitation, but the solicitor would have been an ineligible person at the time of solicitation under the final marketing rule solely because of a change in the scope of events that trigger disqualification, the adviser may provide trailing compensation. Commenters advocated for this approach. *See* IAA Comment Letter; MMI Comment Letter.

[396] Registered investment advisers ascertain their supervised persons' disciplinary history in order to report disciplinary events on Form ADV, which advisers must update by filing additional amendments promptly if the disciplinary information becomes inaccurate in any way. *See* Form ADV: General Instructions. Instruction 4. Certain registered investment advisers are also required to deliver to retail investors a relationship summary disclosing information about the firm. *See* rule 204–5. Form ADV, Part 3 requires that an adviser state ''Yes'' if it or any of its financial professionals currently disclose, or are required to disclose, disciplinary information in its Form ADV, and that the adviser take certain steps to update its relationship summary and inform the Commission and its retail investors whenever any information in the relationship summary becomes materially inaccurate. *See* Form ADV, Part 3: Instructions to Form CRS, General Instruction 8 and Item 4. In addition, if a person is subject to certain disciplinary events and the Commission has issued an order that, for example, censures or places limitations on the activities of that person, it is unlawful for any investment adviser to permit such a person to become, or remain, a person associated with the investment adviser without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order. *See* section 203(f) of the Act.

[397] Advisers should address such methods in their policies and procedures under the Act's compliance rule. *See* rule 206(4)–7.

[398] However, this adviser would have to conduct its inquiry more often than annually if there is information or other indicators suggesting changes in circumstance that would be disqualifying under the rule.

into the promoter's eligibility under the rule.[399]

Like the proposed solicitation rule, the final marketing rule will require that an adviser inquire into the relevant facts; however, it does not specify what method or level of due diligence or other inquiry is sufficient to exercise reasonable care. For example, advisers generally have an in-depth knowledge of their own personnel gained through the hiring process and in the course of the employment relationship. In such circumstances, further steps generally would not be required in connection with a compensated endorsement or testimonial by such personnel. Factual inquiry by means of questionnaires or certifications, perhaps accompanied by contractual representations, covenants and undertakings, may be sufficient in other circumstances, particularly if there is no information or other indicators suggesting bad actor involvement.

b. Ineligible Person

Like the proposed solicitation rule, the final marketing rule applies the definition of ineligible person not only to the person subject to the disqualifying event or disqualifying Commission action, as both terms are discussed below, but also to certain persons associated with an ineligible person.[400] An ineligible person includes a person who is subject to a disqualifying Commission action or is subject to any disqualifying event. It also includes any employee, officer, or director of an ineligible person and any other individuals with similar status or functions within the scope of association with an ineligible person. If the ineligible person is a partnership, the definition includes all general partners. If the ineligible person is a limited liability company managed by elected managers, the definition includes all elected managers. Unlike the proposed rule, the definition does not include persons that directly or indirectly control, or are controlled by, an ineligible person.

One commenter supported the proposed definition of ineligible solicitor.[401] Some commenters, however, expressed concern that the proposed solicitation rule would disqualify solicitors solely because their affiliates are ineligible solicitors, when their affiliates are not involved with or connected to the solicitation.[402] These commenters stated that such potential disqualification would disadvantage larger, more established solicitors that have multiple affiliated entities, and that smaller standalone solicitors would therefore have a competitive advantage. They also stated that disqualification by affiliation, as proposed, would disadvantage investors through lack of choice.

After considering comments, we agree that the final rule should not apply to a disqualified person's control affiliates. These affiliates may operate independently from the person providing the compensated testimonial or endorsement, and may be uninvolved with an adviser's arrangement to compensate that person for the testimonial or endorsement. However, any compensation arrangement structured to avoid the final rule's restrictions, depending on the facts and circumstances, would violate section 208(d) of the Act's general prohibitions against doing anything indirectly which would be prohibited if done directly.[403]

Under the final rule's definition of ineligible person, an entity that is not an ineligible person will not become an ineligible person solely because its employee, officer, or director (or an individual with a similar status or functions) is an ineligible person. However, any employee, officer, director, or person with similar status or functions that is an ineligible person may not directly or indirectly receive compensation for a testimonial or endorsement (*e.g.,* by receipt of a share of profits the entity receives from the testimonial or endorsement, or as a bonus tied to the entity's overall profits without setting aside revenue from testimonials and endorsements).[404]

In addition, we are clarifying that, in the case of an entity that is an ineligible person, the final rule's definition of ineligible person will apply to that entity's employees, officers, and directors (and persons with similar status or functions) associated with the ineligible person, but only within the scope of that association.[405] In some cases, for example, an employee may be associated with two different firms, one of which is an ineligible person and the other is not. Under the final rule, if the employee is not herself an ineligible person, she may conduct compensated testimonial and endorsement activity on behalf of the firm that is not an ineligible person, because she would not be conducting that activity within the scope of her association with the ineligible person.

The final marketing rule adopts, without change from the proposal, the provisions of the definition applying to general partners and elected managers of a partnership and limited liability company, respectively.[406] Commenters did not respond to these aspects of the definition.

c. Disqualifying Commission Action

Under the final rule, like the proposed rule, a disqualifying Commission action is any Commission opinion or order barring, suspending, or prohibiting a person from acting in any capacity under the Federal securities laws.[407] Commenters stated that advisers have historically engaged solicitors that are subject to Commission actions or orders that address disqualifying events under the cash solicitation rule, but that do not bar, suspend, or prohibit the solicitor from acting in any capacity under the Federal securities laws.[408] These commenters requested that we continue to permit advisers to engage solicitors subject to these types of Commission actions to avoid disturbing the existing

[399] If a promoter notifies an adviser that it is subject to a disqualifying event or disqualifying Commission action, the adviser would have knowledge of the promoter's status as an ineligible person and the final rule would prohibit the adviser from compensating the promoter.

[400] *See* final rule 206(4)–1(e)(9). *See also* proposed rule 206(4)–3(a)(3)(ii).

[401] *See* NAPFA Comment Letter.

[402] *See* Credit Suisse Comment Letter; MFA/AIMA Comment Letter I; IAA Comment Letter.

[403] Section 208(d) of the Act.

[404] *See* final rule 206(4)–1(b)(3). This principle also applies if the entity is a partnership, to all general partners; and if the entity is a limited liability company managed by elected managers, to all elected managers.

[405] Final rule 206(4)–1(e)(9) (defining ineligible person, in part, as ''[a] person who is subject to a disqualifying Commission action or is subject to any disqualifying event,'' and ''[a]ny employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person.'')

[406] Final rule 206(4)–1(e)(9). *See also* proposed rule 206(4)–3(a)(3)(ii).

[407] Final rule 206(4)–1(e)(3). The imposition of a bar, suspension, or prohibition may appear in an opinion of the Commission or in an administrative law judge initial decision that has become final pursuant to a Commission order. In both cases, such a bar, suspension, or prohibition is a disqualifying Commission action under the final rule. In addition to associational bars or suspensions, these include, for example, officer and director bars imposed in Commission cease and desist orders, limitations on activities imposed under section 203(e) or 203(f) of the Advisers Act that prevent persons from acting in certain capacities, penny stock bars imposed under section 15(b) of the Exchange Act, and investment company prohibitions imposed under section 9(b) of the Investment Company Act. In addition, under the final rule, if the Commission prohibits or suspends an individual from acting in a specific capacity under the Federal securities laws (*e.g.,* as a supervisor or compliance officer), such prohibition will be a disqualifying Commission action, even if the Commission has not barred or suspended the individual from association with an investment adviser, broker-dealer or other registrant.

[408] *See* Mercer Comment Letter; Credit Suisse Comment Letter. *See infra* section II.C.4.e (discussing the final marketing rule's conditional carve-out).

balance between protecting investors and aiding market efficiency.

We agree with commenters that the final rule should permit advisers to engage compensated solicitors and other compensated promoters that are subject to certain Commission orders, provided that the Commission has not barred, suspended, or prohibited the compensated promoter from acting in any capacity under the Federal securities laws, and subject to conditions under the final rule. We are therefore relocating within the rule—from the definition of disqualifying Commission action, as proposed, to the definition of disqualifying event—Commission cease and desist orders from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the Federal securities laws, and Section 5 of the Securities Act.[409] This change will subject these orders to the final rule's conditional carve-out, if available, which aligns the rule's treatment of these orders with the final rule's other disqualifying events. We believe that these cease and desist orders could call into question a person's trustworthiness or ability to act as a compensated promoter,[410] and that the final rule's conditional carve-out, discussed below, will address the risks of compensating a promoter subject to such an order. No one commented specifically on the proposed inclusion of this provision.[411]

d. Disqualifying Event

The final rule's disqualifying events are substantially similar to what we proposed, except for conforming the look-back period across all disqualifying events to ten years prior to the time the person disseminates the testimonial or endorsement. In addition, as noted above, we are including Commission cease and desist orders from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the Federal securities laws, and Section 5 of the Securities Act as disqualifying events (rather than disqualifying Commission actions). Under the final marketing rule, therefore, a disqualifying event generally includes a finding, order, or conviction by a United States court or certain regulatory agencies that a person has engaged in any act or omission referenced in one or more of the provision's five prongs.

A disqualifying event is any of five categories of events that occurred within ten years prior to the person disseminating an endorsement or testimonial.[412] The first is a conviction by court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in paragraph (2)(A) through (D) of section 203(e) of the Act.[413] The second is a conviction by a court of competent jurisdiction within the United States of engaging in, any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the Act.[414] The third is the entry of any final order by any entity described in paragraph (9) section 203(e) of the Act,[415] or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization (as defined in the Form ADV Glossary of Terms), of the type described in paragraph (9) of section 203(e) of the Act. The fourth is the entry of an order, judgment or decree that is described in paragraph (4) of section 203(e) of the Act, and that is in effect at the time of such dissemination by any court of competent jurisdiction within the United States.[416] The fifth is a Commission order that a person cease and desist from committing or causing a violation or future violation of (i) any scienter-based anti-fraud provision of the Federal securities laws, including without limitation section 17(a)(1) of the Securities Act, section 10(b) of the Exchange Act, section 15(c)(1) of the Exchange Act, and section 206(1) of the Act, or any other rule or regulation thereunder, or (ii) Section 5 of the Securities Act.[417] A disqualifying event does not include any of these events with respect to a person that is also subject to: An order pursuant to section 9(c) of the Investment Company Act with respect to such event; or a Commission opinion or order with respect to such event that is not a disqualifying Commission action, provided in each case that certain conditions are met.[418]

The disqualifying events in the final rule incorporate a familiar framework for advisers evaluating promoters. As proposed, the rule's disqualifying events are drawn from section 203(e) of the Act, which is a basis for Commission action to censure, place limitations on the activities, or revoke the registration of any investment adviser or its associated persons.[419] The final rule also includes actions of two types of regulatory entities not referenced in section 203(e) of the Act—specifically, the Commodity Futures Trading Commission (CFTC) and self-regulatory organizations—as we had proposed. Certain disciplinary actions by these organizations are included in Form ADV Part 1A's disciplinary history disclosures,[420] which all registered investment advisers must complete for themselves and for their advisory affiliates.[421] Only one commenter commented specifically on the addition of disciplinary actions by the CFTC, and supported it.[422] No one commented specifically on the inclusion of disciplinary events by self-regulatory organizations. However, the final rule refers to self-regulatory organization as defined in the Form ADV Glossary of Terms, rather than the term defined in the Exchange Act, as proposed.[423] We believe that compensated promoters that are advisers must be familiar with the Form ADV definition,[424] which is the same as the Exchange Act definition except that the Form ADV definition includes commodities exchanges and excludes the Municipal Securities Rulemaking Board.[425] The inclusion of commodities exchanges also aligns with the final rule's inclusion of the CFTC in the disciplinary events provisions.

As discussed above, we are including in this definition a Commission cease and desist order from committing or

[409] *See* final rule 206(4)–1(e)(4)(v). *See also* proposed rule 206(4)–3(a)(3)(iii)(A)(1).

[410] *See* 2019 Proposing Release, *supra* footnote 7, at text accompanying n.467.

[411] *But see supra* footnote 381 (discussing that some commenters advocated for conforming the rule's disciplinary provision with rule 506 of Regulation D under the Securities Act, which includes similar cease and desist orders, in connection with the proposed rule's new application to broker-dealers soliciting investors in private funds).

[412] Final rule 206(4)–1(e)(4).

[413] Final rule 206(4)–1(e)(4)(i).

[414] Final rule 206(4)–1(e)(4)(ii).

[415] Final rule 206(4)–1(e)(4)(iii). We made a non-substantive change from the proposal to cross reference the Advisers Act statutory provision rather than repeat the wording of the statutory provision in the final rule.

[416] Final rule 206(4)–1(e)(4)(iv).

[417] Rule 206(4)–1(e)(4)(v).

[418] Rule 206(4)–1(e)(4)(vi).

[419] *See* section 203(e) and (f) of the Act.

[420] *See* Form ADV Part 1A, Item 11 (requiring disclosure of certain actions related to the Commodity Futures Trading Commission (CFTC) and self-regulatory organizations).

[421] The term advisory affiliates is defined in the Form ADV Glossary of Terms, in part, as (1) all of your officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling or controlled by you; and (3) all of your current employees (other than employees performing only clerical, administrative, support or similar functions). Form ADV Part 2 also requires information about the disciplinary history of the adviser and its personnel. *See e.g.,* Form ADV Part 2A, Item 9.

[422] *See* Consumer Federation Comment Letter.

[423] *See* proposed rule 206(4)–3(a)(3)(iii)(B)(3).

[424] *See* the Form ADV Glossary of Terms (defining Self-Regulatory Organization as ''[a]ny national securities or commodities exchange, registered securities association, or registered clearing agency.'').

[425] *See* Exchange Act section 3(26). The Form ADV definition also aligns with the definition of self-regulatory organization used in Form BD for broker-dealers. *See* Form BD, Explanation of Terms.

causing a violation or future violation of scienter-based anti-fraud provision of the Federal securities laws or of Section 5 of the Securities Act, which we had proposed to be disqualifying Commission actions. We continue to believe that including violations or future violations of these provisions protects investors from compensated promoters' bad acts that are likely to have the most effect on investors' review of a promoter's compensated testimonial or endorsement.

Like those in the proposed rule, the final marketing rule's ''disqualifying events'' are limited to actions of courts of competent jurisdiction within the United States, and of certain regulatory and self-regulatory organizations within the United States. Only one commenter commented on this aspect of the proposed rule, and supported it.[426]

In a change from the proposed rule, the final rule's look-back period will apply to all of the rule's ''disqualifying events,'' rather than only to some. We received no comments on the proposed look-back period, but we are conforming the period across the definition to ease advisers' compliance with the rule by providing a consistent framework for compliance. A ten-year look-back period is included in section 203(e) of the Advisers Act.[427] Advisers also apply this look-back period when reporting to the Commission their disciplinary history and the disciplinary history of all of their advisory affiliates.[428] In addition, we are making a change to the fourth prong of the definition of disqualifying event to specify that this prong applies only to any order, judgment, or decree described therein that is in effect at the time the testimonial or endorsement is disseminated. This change aligns this prong of the definition of disciplinary event with the provision of the Advisers Act that it references.[429]

In addition, we are making a change from the proposed solicitation rule's look-back period to tie it to the time the testimonial or endorsement is disseminated, rather than to the time of solicitation. As discussed above, this change in timing will not result in a substantive change in timing for solicitations delivered orally, for which the time of solicitation and the time of dissemination are generally the same. This change conforms the look-back period to other aspects of the final marketing rule.[430] Specifically, we believe that the same rationale for tying the final rule's reasonable care knowledge requirement to the dissemination of a compensated testimonial or endorsement applies here. Therefore, a disqualifying event is any of the final rule's enumerated disciplinary events that occurred within ten years prior to dissemination of an endorsement or testimonial.

e. Conditional Exception From Definition of ''Disqualifying Event''

The final rule provides a conditional carve-out from the definition of disqualifying event, adapted from the proposed solicitation rule. The carve-out permits an adviser to compensate a promoter that is subject to certain disqualifying actions, when the Commission has issued an opinion or order with respect to the promoter's disqualifying action, but not barred or suspended the promoter or prohibited the promoter from acting in any capacity under the Federal securities laws, subject to conditions. Specifically, the carve-out applies to a person that is subject to (A) an order pursuant to section 9(c) of the Investment Company Act with respect to a disciplinary action that would otherwise be a disciplinary event; or (B) a Commission opinion or order with respect to such action that is not a disqualifying Commission action, provided that, for each type of order or opinion described therein, certain conditions are met.[431] The conditions are that: (1) The person is in compliance with the terms of the order or opinion including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, and fines; and (2) for a period of ten years following the date of each order or opinion, the advertisement containing the testimonial or endorsement must include a statement that the person providing the testimonial or endorsement is subject to a Commission order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the Commission's website.[432]

This conditional carve-out is substantively similar to the proposed solicitation rule's carve-out from the definition of ineligible solicitor, with two changes The first change is that the final rule requires that the promoter be ''in compliance with,'' rather than, as proposed, that a solicitor ''has complied with,'' the terms of the order or opinion. The final rule will therefore permit a compensated promoter to apply the conditional carve-out if the promoter has complied with all of the terms of the applicable opinion or order that are required to be completed at the time the testimonial or endorsement is disseminated, even if there are additional terms of the applicable order or opinion that are, at that time, not yet required to be completed. We believe that the carve-out should not benefit promoters that are not in good standing under the terms of their Commission opinion or order.

Second, we revised the disclosure requirement of the conditional carve-out. The final rule's disclosure condition is designed to provide investors with notice that the promoter has disciplinary action(s) and direct the investor to additional information. We revised the disclosure condition to reflect that the final rule does not require a separate solicitor disclosure, as proposed for compensated solicitations. It also reflects that the final rule's disqualification provisions apply to a broader population of promoters than solicitors and that advisers may advertise compensated testimonials and endorsements through space-constrained media. Accordingly, because there is no longer a separate solicitor disclosure requirement, the final rule requires the disclosure about disciplinary action(s) as part of the advertisement, rather than included in a separate solicitor disclosure. Further, because a testimonial or endorsement may appear in space-constrained media, the required disclosure is more concise than proposed. Instead of requiring a separate description of the acts or omissions that are the subject of, and the terms of, the opinion or order, the advertisement containing the testimonial or endorsement under the final rule must include a statement that the promoter is subject to a Commission opinion or order regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the Commission's

[426] *See* NRS Comment Letter. A person subject to a regulatory action by a foreign court or regulatory or self-regulatory organization may become be an ineligible person under the final rule, to the extent that the Commission uses its authority to bar, suspend, or prohibit that person from acting in any capacity under the Federal securities laws. *See* the final rule's definition of disqualifying Commission action.

[427] Sections 203(e)(2) and (3) of the Act (containing a ten-year look-back period for convictions for certain felonies and misdemeanors).

[428] Form ADV Part 1A, Item 11.

[429] *See* section 203(e)(4) of the Act.

[430] *See supra* sections II.C.2 (discussing the disclosure requirements for testimonials and endorsements) and II.C.4.a (discussing the reasonable care knowledge standard).

[431] Final rule 206(4)–1(e)(4)(vi). The conditions apply to each applicable type of order, and opinion or order, described in paragraphs (A) and (B) therein. *See* final rule 206(4)–1(e)(4)(vi).

[432] *Id.*

website.[433] We believe the final rule's disclosure will make salient the fact that the promoter is subject to disciplinary action(s), while directing the investor to the facts and circumstance in the Commission opinion or order. An advertisement containing testimonial or endorsement disseminated electronically should include the opinion or order or an electronic link directly to the opinion or order on the Commission's website.

Some commenters requested we adopt a carve-out that aligns with advisers' long-established practice of engaging solicitors subject to Commission actions where the Commission order or opinion does not bar, suspend, or prohibit a person from acting in any capacity under the Federal securities laws.[434] One commenter did not oppose the proposed carve-out, but urged the Commission to use its authority to issue non-disqualifying Commission actions only in the most exceptional of circumstances.[435]

We believe that when the Commission has issued an opinion or order with respect to a person's disqualifying conduct but not barred or suspended the person or prohibited the person from acting in any capacity under the Federal securities laws, it is appropriate to likewise permit such person to engage in activities related to compensated testimonials and endorsements. This approach obviates the need for the Commission to consider how to treat under the final rule a person with these disciplinary events. However, in the event that the Commission has not previously evaluated the disqualifying event and neither the promoter nor any person on its behalf has previously sought a waiver under the Investment Company Act with respect to the disqualifying event, such person may contact the Commission to seek relief.

Commenters that addressed this provision generally supported it, noting the appropriateness of disclosure as a remedy for solicitors subject to non-disqualifying Commission actions.[436] One commenter, however, stated that the ten-year disclosure period is overly punitive, and requested that we reduce the disclosure period to five years.[437] We are adopting a ten-year look-back, however, because that period is consistent with the look-back period for the rule's disqualifying events, which is based on the look-back in the certain of the Act's statutory disqualification provisions and the rules for reporting to the Commission disciplinary history of advisers and their advisory affiliates.[438] We believe that this period provides for a sufficient period after the disqualifying event that the past actions of the ineligible person may no longer pose as significant a risk.

f. Application to Existing Events

The final rule will not apply to pre-effective date conduct that would otherwise trigger the disqualification provisions, as we proposed.[439] The final rule's disqualification provision, paragraph (b)(3), will not disqualify any person for purposes of the final rule for any matter(s), that occurred prior to the effective date of the rule, if such matter(s) would not have disqualified such person under rule 206(4)–3(a)(1)(ii), as in effect prior to the effective date of the rule.[440] As discussed above, the final rule's disqualifying events are slightly broader than those under the current solicitation rule. For example, the solicitation rule's disqualification provisions do not include the entry of a final order of the CFTC or a self-regulatory organization, whereas the final rule includes such conduct.[441] We agree with commenters that it would be inappropriate to apply the final rule's broader disqualification provisions retroactively to prior conduct—such as a pre-effective date CFTC order—when such conduct had not disqualified that solicitor under the solicitation rule.[442] In this case, the rule will not disqualify a person for prior conduct that did not cause disqualification at that time under the solicitation rule.

However, we disagree with some commenters who requested that we grandfather all ongoing solicitation arrangements entered into prior to the final rule's effective date. Commenters argued that without a broad grandfathering provision, the final rule would require firms to renegotiate agreements with solicitors that had not been subject to the current rule when executed.[443] Commenters' approach would effectively provide a blanket exemption that permits solicitation activities to continue indefinitely without complying with the final rule, if a solicitor performs such activity pursuant to a pre-effective date solicitation arrangement.[444] Unlike the scenario discussed above, we believe this would exempt post-effective date solicitation activity that we explicitly intend to capture in the final rule.

5. Exemptions

Under the final rule, we are adopting exemptions from certain conditions for compensated testimonials and endorsements by an adviser's affiliated personnel and for *de minimis* compensation.[445] We are also adopting a partial exemption from certain conditions for testimonials and endorsements by a registered broker-dealer. The final rule will not exempt testimonials and endorsements related to the provision of impersonal investment advice or nonprofit

[433] *Id. See also* proposed rule 206(4)–3(a)(3)(iii)(C)(2)(ii).

[434] *See* Credit Suisse Comment Letter; Mercer Comment Letter. *See* also Dougherty & Co., LLC, SEC Staff No-Action Letter (Mar. 21, 2003), revised by Dougherty & Co., LLC, SEC Staff No-Action Letter (July 3, 2003) (collectively, the ''Dougherty Letter''). In the Dougherty Letter, Commission staff stated that it would not recommend enforcement action under section 206(4) and rule 206(4)–3 if an investment adviser pays cash solicitation fees to a solicitor who is subject to an order issued by the Commission under section 203(f) of the Advisers Act, or who is subject to a ''Rule 206(4)–3 Disqualifying Order,'' based on certain representations. The staff described a Rule 206(4)–3 Disqualifying Order as an order issued by the Commission in which the Commission has found that the solicitor: (a) Has been convicted of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Advisers Act; (b) has engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the Advisers Act; or (c) was subject to an order, judgment, or decree described in section 203(e)(4) of the Advisers Act. Representations included that no Rule 206(4)–3 Disqualifying Order bars or suspends the solicitor from acting in any capacity under the Federal securities laws, and that, for a period of ten years following the date of each Rule 206(4)–3 Disqualifying Order, the solicitor or the investment adviser with which it has a solicitation arrangement subject to the cash solicitation rule discloses the order to each person whom the solicitor solicits.

[435] *See* Consumer Federation Comment Letter.

[436] *See* Credit Suisse Comment Letter; SIFMA AMG Comment Letter; Mercer Comment Letter.

[437] *See* SIFMA AMG Comment Letter I (''The ten year time period is significant, and may have the effect of forcing such persons out of business rather than making them come into compliance.'').

[438] *See supra* footnotes 427 and 428 (discussing the ten-year lookback).

[439] As discussed below, the staff is also stating its view that it will not object if certain third parties that have been operating in a manner consistent with certain staff no-action letters under the existing cash solicitation rule, which will be nullified due to the rescission of the solicitation rule, provide compensated testimonials and endorsements under the new rule notwithstanding otherwise disqualifying events. *See infra* section II.J.

[440] Final rule 206(4)–1(b)(3). Such a person will not be an ''ineligible person'' due to that conduct.

[441] *Compare* current rule 206(4)–3(a)(1)(ii), *with* final rule 206(4)–1(e)(5)(iii).

[442] *See* IAA Comment Letter; Credit Suisse Comment Letter.

[443] *See, e.g.,* FSI Comment Letter; IAA Comment Letter.

[444] However, *see supra* footnote 395 and accompanying text for a discussion of trailing compensation.

[445] The proposed rule would have provided four exemptions under the solicitation rule for: (1) Impersonal investment advice; (2) advisers' in-house solicitors and other affiliated solicitors; (3) *de minimis* compensation; and (4) nonprofit programs. Proposed rule 206(4)–3(b).

programs.[446] Although some commenters suggested that we adopt additional exemptions for participants in refer-a-friend programs,[447] publishers (*e.g.,* bloggers),[448] and those who refer clients from networking relationships,[449] we do not believe general exemptions for these categories are appropriate. We believe that the final exemptions appropriately balance the risks of the use of compensated testimonials and endorsements with the benefits and protections of the final rule.

a. Affiliated Personnel

Similar to the proposed solicitation rule, the final rule will partially exempt a testimonial or endorsement by an adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person.[450] For this exemption to apply, the affiliation between the investment adviser and such person must be readily apparent to or disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser must document such person's status at the time the testimonial or endorsement is disseminated.[451] This is a partial exemption because the testimonial or endorsement will be exempt from the final rule's disclosure requirements, but it still will be necessary to comply with the adviser oversight and disqualification provisions.[452] Commenters were generally supportive of retaining this current partial exemption under the solicitation rule.[453]

As proposed under the solicitation rule, we are modifying the current rule to permit an adviser to rely on the exemption not only when the affiliated status is disclosed to the investor, but also when such relationship is readily apparent to the investor.[454] We continue to believe that, in such cases, a requirement to disclose a person's status as an affiliated person would not result in a benefit to the investor, and would create compliance burdens for the adviser and person giving the testimonial or endorsement. Commenters generally agreed with our approach, noting that disclosures regarding status are unnecessary because of the obvious and close relationship of some affiliates.[455] However, commenters also suggested more guidance on the meaning of ''readily apparent.'' [456]

What constitutes ''readily apparent'' will depend on the facts and circumstances. The relationship between an affiliated person and the adviser may be readily apparent to an investor, such as when an in-house solicitor shares the same name as the advisory firm or a person operates under the same name brand as the adviser. An affiliated relationship also may be readily apparent when a person is clearly identified as related to the adviser in its communications with the investor at the time the testimonial or endorsement is disseminated. For example, the person's affiliation would be readily apparent if a business card distributed to investors at the time the testimonial or endorsement is disseminated clearly and prominently states that the person is a representative of the adviser. There may be other situations where the relationship between the adviser and its affiliated personnel is well known.

One commenter suggested that there be a presumption that an adviser and its affiliated person's relationship is readily apparent to an investor if the adviser has disclosed the affiliation in its Form ADV brochure.[457] However, we are not adopting such a presumption because the client may not have read the Form ADV brochure at the time the testimonial or endorsement is disseminated.

In certain situations, the adviser's relationship with an affiliated person is not readily apparent, such as when the person is a representative of the adviser but operates its marketing activities through its own DBA name or brand, and the name of the adviser is omitted or less prominent.[458] If an adviser's and its affiliated person's relationship is not readily apparent, the adviser or affiliated person must disclose the affiliation in order to avail itself of the rule's partial exemption.

As proposed under the solicitation rule, we are expanding the current partial exemption for affiliated persons to cover any person that controls, is controlled by, or is under common control with, the investment adviser that is compensating the person pursuant to the final rule.[459] One commenter explicitly supported this expansion.[460] We continue to believe that the rule should treat a person that controls, is controlled by, or is under common control with, the investment adviser, similarly to any partners, officers, directors or employees of such affiliated person.

One commenter suggested that we include an adviser's independent contractors under this partial exemption.[461] However, another suggested that we limit the exemption to an adviser's supervised persons.[462] We believe that the supervision and control an adviser exercises over an endorsing independent contractor may vary among different advisers and independent contractors. If the adviser exercises substantially the same level of supervision and control over an independent contractor as the adviser exercises over its own employees with respect to its marketing activities, the partial exemption would be available.

We continue to believe, and commenters generally agreed, that when an investor is aware that a person endorsing the adviser is affiliated with the adviser, disclosures are not necessary to inform the investor of the person's bias in recommending such adviser. [463] An investor is on notice that an in-house solicitor has a stake in soliciting the investor for its own firm. In these instances, the policy goals underlying the disclosure element of the final rule would already be satisfied.

As proposed under the solicitation rule, the final rule's disqualification provisions will apply to affiliated personnel.[464] One commenter expressed

[446] *See* final rule 206(4)–1(b).

[447] *See* IAA Comment Letter.

[448] *See* IAA Comment Letter.

[449] MMI Comment Letter.

[450] For ease of reference, we refer to these persons in the release as ''affiliated persons'' or ''affiliated personnel.''

[451] Final rule 206(4)–1(b). The proposed solicitation rule would have provided a partial exemption for an adviser's in-house solicitors and other affiliated solicitors. *See* proposed rule 206(4)–3(b)(2).

[452] However, an adviser's affiliated persons will not be required to comply with the written agreement requirement under the adviser oversight and compliance provision. *See* final rule 206(4)–1(b)(4)(ii). *See also* proposed rule 206(4)–3(b)(2). The proposed rule would have created an exemption from the disclosure requirements by virtue of the exemption from the written agreement requirement.

[453] *See, e.g.,* SIFMA AMG Comment Letter I; Proskauer Comment Letter.

[454] Final rule 206(4)–1(b)(4)(ii).

[455] *See, e.g.,* SIFMA AMG Comment Letter I; Proskauer Comment Letter; Mercer Comment Letter.

[456] SIFMA AMG Comment Letter I; Fidelity Comment Letter.

[457] Fidelity Comment Letter.

[458] Such persons could be employees or independent contractors.

[459] Final rule 206(4)–1(b)(4)(ii).

[460] *See* Fidelity Comment Letter.

[461] SIFMA AMG Comment Letter I. We requested comment on whether we should define ''employee'' to include an adviser's independent contractors or provide that this partial exemption for in-house personnel applies to an adviser's independent contractors. 2019 Proposing Release, *supra* footnote 7, at section II.B.7.

[462] *See* Mercer Comment Letter.

[463] *See* SIFMA AMG Comment Letter I; Proskauer Comment Letter; Mercer Comment Letter.

[464] *See* final rule 206(4)–1(b)(3). *See also* proposed rule 206(4)–3(b)(2).

concern that this approach would be overly restrictive and suggested that the rule also should exempt certain affiliated personnel from the disqualification provisions.[465] This commenter stated that there is greater control and opportunity to train and rehabilitate affiliated personnel. We do not believe that the availability of training justifies exempting affiliated personnel from the disqualification provisions, and in other circumstances under the Federal securities laws the availability of such training does not affect affiliated personnel's disqualification.

Some affiliated persons with disciplinary events under the final rule will be disqualified from association with an investment adviser independent of the final rule, if the Commission has barred or suspended those persons from association with an investment adviser under section 203(f) of the Act. However, other affiliated persons with such disciplinary events may not be subject to such Commission action and, absent the application of the rule's disqualification provisions, would be permitted to endorse an adviser as an affiliated person, notwithstanding their disqualifying event. After considering comments, including those from our Investor Feedback Flyers, we believe that the disqualification provisions should apply to compensated testimonials and endorsements, regardless of whether the marketing activity is conducted by a person affiliated or unaffiliated with the adviser.[466]

Unlike the proposed solicitation rule, however, the final rule will subject affiliated persons to a part of the adviser oversight and compliance provision, which will require that the investment adviser have a reasonable basis for believing that the testimonial or endorsement complies with the requirements of the rule.[467] We believe that this part of the oversight and compliance provision will help reduce the risk that any testimonials or endorsements do not comply with the final rule, particularly with respect to certain affiliates that may not be subject to the adviser's compliance policies and procedures. However, similar to the proposed solicitation rule, the final rule will not subject affiliated personnel to the written agreement requirement under the adviser oversight and compliance provision.[468] Although we did not receive any comments on this particular modification under the proposed in-house and other affiliated personnel exemption, we continue to believe that advisers should not be required to enter into written agreements with their own affiliated persons in order to avail themselves of this partial exemption. We also continue to believe that such a requirement under the current rule creates additional compliance obligations for the adviser and its affiliated persons that are not justified by any corresponding benefit.

Finally, we are adopting a new requirement, largely as proposed under the solicitation rule, that in order to avail itself of this partial exemption, an adviser must document an affiliated person's status contemporaneously with disseminating the testimonial or endorsement.[469] One commenter criticized this requirement as unnecessary and unduly burdensome, stating that the Commission should either remove it or clarify the form and type of documentation expected.[470] We are not requiring a specific form of documentation to record an affiliated person's status. We continue to believe that this approach affords advisers the flexibility to develop their own policies and procedures or use existing records to document such status.

Advisers may wish to document this status through various means. For example, an adviser's policies and procedures regarding affiliated personnel may require that the adviser document a person's status on an internal form at the time that the adviser or affiliated person disseminates the testimonial or endorsement. However, an adviser does not need to create a new form of separate documentation to satisfy this requirement. For example, to the extent that an affiliated person's status is notated through corporate records, employee payroll records, Central Registration Depository (''CRD''), or any other similar records and licensing for investment adviser representatives, then such records would suffice so long as such records are kept current.

Similar to our approach under the disqualification provisions applicable to testimonials and endorsements, we believe that the time of dissemination is the most appropriate time for an adviser to know about, or exercise reasonable care to determine, whether personnel is affiliated. The rule does not require an adviser to monitor the affiliated status of a person on a continuous basis. Instead, an adviser could conduct periodic inquiries to confirm that any testimonials or endorsements provided in reliance on this exemption are by affiliated personnel.

b. De Minimis Compensation

The final rule will have a partial exemption for the use of testimonials or endorsements that are for zero or *de minimis* compensation.[471] Specifically, a testimonial or endorsement that is disseminated for no compensation or *de minimis* compensation will not be subject to the disqualification provisions or the written agreement requirement, but must comply with the disclosure and oversight provisions.[472] The proposed solicitation rule would have provided a full exemption for solicitation activities performed for *de minimis* compensation, which we proposed as $100 or less.[473]

Commenters generally supported the proposed *de minimis* exemption. However, commenters also suggested modifications to increase the utility of the exemption.[474] For example, some commenters suggested raising the proposed *de minimis* threshold amount, arguing that $100 would be too low.[475] One commenter, while generally supporting the idea of a *de minimis* exemption, stated that tracking the exemption would be difficult in certain situations where advisers may make donations on behalf of clients who refer new prospective clients.[476] Another commenter stated that the exemption would only offer a superficial benefit

[465] SIFMA AMG Comment Letter I.

[466] *See* Investment Adviser Marketing Feedback Form. Question 15 asks ''How important is it to know the following information about a paid salesperson's referral?'' and lists among other things, ''Whether the solicitor has been disciplined for financial-related misconduct.'' Commenters were given the option to answer on a scale of 1–5, with 1 meaning ''Very Important'' and 5 meaning ''Not Important.'' There was also an option to answer ''Don't Know.'' More than two-thirds of the respondents indicated that this disciplinary information was ''Very Important.''

[467] *See* final rule 206(4)–1(b)(2)(i)).

[468] *See* final rule 206(4)–1(b)(4)(ii).

[469] Final rule 206(4)–1(e)(2). The proposed solicitation rule would have required that ''the adviser documents such solicitor's status *at the time the adviser enters into the solicitation arrangement.*'' Proposed rule 206(4)–3(b)(2)(ii) (emphasis added).

[470] MMI Comment Letter.

[471] Final rule 206(4)–1(b)(4)(i).

[472] *See supra* footnote 123 (stating that a testimonial or endorsement for which an adviser provides *de minimis* compensation will be an advertisement under the second prong of the definition of advertisement).

[473] Proposed rule 206(4)–3(b)(3). Under the proposed *de minimis* compensation exemption, the solicitation rule would not have applied if the solicitor complied with certain conditions.

[474] *See, e.g.,* Comment Letter of Wealthfront Corp. (Mar. 3, 2020); SIFMA AMG Comment Letter I; MMI Comment Letter; and Flexible Plan Investments Comment Letter I.

[475] *See, e.g.,* Comment Letter of MarketCounsel (Feb. 10, 2020) (''MarketCounsel Comment Letter''); SIFMA AMG Comment Letter I; IAA Comment Letter.

[476] NAPFA Comment Letter.

because compensation paid to a solicitor would trigger required disclosure under the advertising rule since solicitor referrals often involve testimonials or endorsements.[477] One commenter suggested eliminating the exemption altogether, arguing that small dollar values still create conflicts between a solicitor and the solicited investor.[478]

After considering comments, we believe a partial exemption is necessary because it could be overly burdensome for advisers and persons providing testimonials or endorsements for *de minimis* compensation to comply with the rule's disqualification provisions. We do not believe the same level of incentive or risk to defraud investors exists when a *de minimis* fee is involved.[479] In supporting our proposed *de minimis* exemption, commenters agreed that a solicitor's incentives are reduced significantly when receiving *de minimis* compensation and that the need for heightened safeguards is likewise reduced.[480] We also believe that many solicitation and referral programs would benefit from this exemption. Commenters confirmed our observation that there is a recent trend towards the use of programs that involve *de minimis* compensation, such as refer-a-friend programs.[481]

However, we agree with commenters to both the proposed advertising rule and solicitation rule who expressed concern that minimal compensation may still create conflicts.[482] We believe disclosure of any conflicts is paramount to mitigate the risks that an investor would mistakenly view the promoter as unbiased and rely on a testimonial or endorsement more than the investor otherwise would have if the investor knew of any incentive or conflict. Even when there is no compensation involved, we believe these conflicts of interest create an incentive or bias on the part of the promoter. For instance, if the adviser and the promoter are participants in a referral network, it is important that these investors fully understand that the provider expects to benefit from its endorsement of or testimonial about the adviser. Although this will create some burden for promoters who are not already subject to the existing cash solicitation rule, we believe that the benefits of fully informing and protecting investors justify any such burden. Moreover, with respect to advisers, providing such disclosures is consistent with an adviser's duty to disclose all conflicts of interest and thus will not be unduly burdensome for advisers. In addition, we believe that subjecting testimonials and endorsements that are for no or *de minimis* compensation to the adviser oversight requirement is a reasonable benefit that justifies any burdens. Accordingly, unlike the proposed *de minimis* exemption under the solicitation rule, the final marketing rule will subject testimonials and endorsements for zero or *de minimis* compensation to the required disclosure and adviser oversight provisions and exempt such testimonials and endorsements only from the disqualification provisions.[483]

We also believe the exemption from the disqualification provisions will help ease the burden of compliance in many situations where the testimonials or endorsements are limited in scope, such as in refer-a-friend programs. To illustrate, if the disqualification provisions were to apply, one commenter stated that firms with ''thousands of retail clients,'' not knowing who will participate in the refer-a-friend programs, would have to inquire into each client's disciplinary history.[484] We agree that such an undertaking would be a major compliance challenge that is disproportionate to the limited scope and magnitude of such non-professional refer-a-friend programs. We accordingly believe that our approach appropriately balances the need for protections of the final rule with the burdens placed on the advisers complying with the rule.

After considering comments and various thresholds, however, we are increasing the proposed *de minimis* threshold amount to $1,000.[485] Accordingly, the disqualification provisions will not apply if an investment adviser provides compensation to a promoter of a total of $1,000 or less (or the equivalent value in non-cash compensation) during the preceding twelve months. We consider $1,000 to more appropriately capture referrals from both professional and non-professional types of testimonials and endorsements than the $100 amount we proposed. We also continue to believe that adopting an aggregate limit over a trailing 12-month period is consistent with our goal of providing an exception for small or nominal payments.[486] One commenter supported our approach in requiring a trailing period, agreeing that it would not overly burden advisers because adviser should be keeping records of such payments.[487]

c. Registered Broker-Dealers

Under the final rule, we are providing an exemption from the rule's disqualification provisions for promoters that are brokers or dealers registered with the Commission in accordance with section 15(b) of the Exchange Act, provided they are not subject to statutory disqualification under the Exchange Act.[488] In addition, we are providing an exemption from the rule's disclosure provisions when a broker-dealer is providing a testimonial or endorsement to a retail customer that is a recommendation subject to Regulation BI.[489] Finally, we are providing an exemption from certain disclosure requirements when a broker-dealer provides a testimonial or endorsement to an investor who is not a retail customer as defined in Regulation BI.[490]

While the proposed amendments to the solicitation rule would have applied the rule to all broker-dealer solicitations, we had contemplated whether to exempt certain advertisements or solicitation activities in some fashion from each of the proposed rules because we recognized some overlap in requirements applicable to broker-dealers.[491] We received several comments suggesting that we eliminate the application of the

[477] SBIA Comment Letter.

[478] NASAA Comment Letter.

[479] We stated in our proposal that we recognize that the solicitor disqualification may pose major challenges, especially for smaller advisers. *See* 2019 Proposing Release, *supra* footnote 7, at section II.B.7.

[480] *See, e.g.,* IAA Comment Letter (''This will help alleviate the compliance burden on investment advisers where incentives are inherently limited, and thus risks to prospective clients are low.''); Mercer Comment Letter.

[481] *See, e.g.,* MarketCounsel Comment Letter; SIFMA AMG Comment Letter I.

[482] *See* NASAA Comment Letter (arguing against the proposed *de minimis* exemption under the solicitation rule); Prof. Jacobson Comment Letter (supporting no *de minimis* exemption for testimonials and endorsements from the proposed advertising rule's disclosure requirements).

[483] *See* final rule 206(4)–1(b)(4)(i). However, testimonials and endorsements for zero or *de minimis* compensation will not be required to have a written agreement under the adviser oversight provision. *See id. See also* section II.C.3. (discussing the written agreement requirement under the adviser oversight and compliance provision).

[484] IAA Comment Letter.

[485] Final rule 206(4)–1(e)(2).

[486] We would measure the initial date of the 12-month period to begin at the time that a promoter's testimonial or endorsement is initially disseminated.

[487] MarketCounsel Comment Letter.

[488] Final rule 206(4)–1(b)(4)(iii)(C).

[489] Final rule 206(4)–1(b)(4)(iii)(A).

[490] Final rule 206(4)–1(b)(4)(iii)(B).

[491] 2019 Proposing Release, *supra* footnote 7, at 38 and 211. We also considered the recently proposed exemption for certain ''finders'' involved in exempt offerings. *See* Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders, Release No. 34–90112 (Oct. 7, 2020) [85 FR 64542 (Oct. 13, 2020)].

proposed advertising rule to advertisements related to potential investors in pooled investment vehicles, and that we exempt registered broker-dealers that solicit private fund investors from the proposed solicitation rule.[492] These commenters expressed concern that the proposed amendments would result in unnecessary and overlapping layers of regulation, including with respect to disclosures provided to investors, when a registered broker-dealer is involved in the sale of interests in a pooled investment vehicle.[493] One commenter also stated that broker-dealers already are subject to the statutory disqualifications in section 3(a)(39) of the Exchange Act.[494]

We continue to believe that certain provisions of the final rule, such as the general prohibitions and performance provisions, should apply to all advertisements, regardless of whether the advertisement is provided to potential clients of an investment adviser or potential investors in a private fund.[495] However, we recognize that regulatory overlap would yield little benefit. Specifically, we agree with commenters that certain statutory or regulatory requirements applicable to registered broker-dealers will satisfy the policy goals of some of the conditions.[496] Broker-dealers are subject to disqualification for a variety of misconduct under the Exchange Act, many of which we believe are sufficiently similar to the misconduct that would trigger a disqualification under the marketing rule, but the Exchange Act is particularized to broker-dealer activity.[497] We are confident these disqualification provisions will serve the same policy goal as the disqualification provisions under this rule.[498] As a result, the final rule will exempt from the disqualification provisions any testimonial or endorsement by a broker-dealer registered with the Commission under section 15(b) of the Exchange Act, if the broker-dealer is not subject to statutory disqualification under section 3(a)(39) of the Exchange Act.[499]

Likewise, we recognize that the requirements under Regulation BI include conflicts of interest and compensation disclosures.[500] For instance, under the Regulation BI Disclosure Obligation, when making a recommendation to a retail customer, a broker-dealer must disclose all material facts about the scope and terms of its relationship with the retail customer, such as the material fees and costs the customer will incur, as well as all material facts relating to its conflicts of interest associated with the recommendation, including third-party payments and compensation arrangements.[501] In addition, all of the other Regulation BI obligations would apply when the broker-dealer is making a recommendation to a retail customer. Accordingly, we believe that the robust, protective framework of Regulation BI renders the disclosure requirements of the final marketing rule unnecessary when a broker-dealer provides a testimonial or endorsement to a retail customer that is a recommendation subject to Regulation BI.[502]

In addition, we are providing a partial exemption in cases where a registered broker-dealer provides a testimonial or endorsement to an investor who is not a retail customer as defined in Regulation BI.[503] Specifically, under the final rule, a broker-dealer that provides a testimonial or endorsement to such an investor will not be required to disclose the material terms of any compensation arrangement or a description of any material conflicts of interest.[504] We believe that the clear and prominent disclosures such a broker-dealer will be required to provide under our final rule are sufficient to alert an investor that is not a retail customer that a testimonial or endorsement is a paid solicitation.[505] We also believe that these investors will be able to request from the broker-dealer other information about the solicitation.

Aside from this partial exemption from the disclosure provisions, the disclosure obligations of the final marketing rule will apply when a broker-dealer provides a testimonial or endorsement that is not a recommendation subject to Regulation BI. While registered broker-dealers may be subject to other disclosure obligations in these circumstances, these obligations generally do not align with the disclosure obligations for testimonials and endorsements under our final rule.[506] In addition, although broker-dealers must comply with FINRA rule 2210, we do not believe that FINRA rule 2210 requires the same substantive disclosures that we require under the final rule.[507] Moreover, communications for purposes of FINRA rule 2210 are ''written'' communications, whereas our final rule would apply to written *and* oral advertisements.[508] Accordingly,

[492] *See, e.g.,* Wellington Comment Letter; Fidelity Comment Letter; MFA/AIMA Comment Letter I; IAA Comment Letter; Credit Suisse Comment Letter: SIFMA AMG Comment Letter I.

[493] *Id.*

[494] IAA Comment Letter.

[495] As stated in the proposal, we recognize that there may be some overlap between the prohibition in rule 206(4)–8 and the final rule. However, the final rule provides more specificity regarding what we believe to be false or misleading statements that advisers to private funds must avoid in their advertisements. We also continue to believe that any additional costs to advisers to private funds as a result of potential overlap between the final rule and rule 206(4)–8 with respect to advertisements will be minimal, as an advertisement that would raise issues under rule 206(4)–8 might also raise issues under a specific provision of the final rule as well as other anti-fraud provisions of the Federal securities laws. *See* 2019 Proposing Release, *supra* footnote 7, at 35–36.

[496] *See, e.g.,* MFA/AIMA Comment Letter I; Sidley Austin Comment Letter; SIFMA Comment Letter I.

[497] *See* section 3(a)(39) of the Exchange Act. Among other things, a person is subject to ''statutory disqualification'' under the Exchange Act if such person (i) is subject to an order of the Commission denying, suspending for a period not exceeding 12 months, or revoking the person's registration as a broker or dealer or barring or suspending for a period not exceeding 12 months the person's being associated with a broker or dealer; (ii) is subject to an order of the CFTC denying, suspending, or revoking his registration under the Commodity Exchange Act; and (iii) has been convicted of any specified offense or other felony within 10 years of the date of filing of an application for membership of a self-regulatory organization. *See also* final rule 206(4)–1(e)(4).

[498] In this case, we agree with commenters that certain statutory or regulatory requirements applicable to registered broker-dealers will satisfy the policy goals of some of the conditions. *See, e.g.,* MFA/AIMA Comment Letter I; Sidley Austin Comment Letter; SIFMA AMG Comment Letter I.

[499] Final rule 206(4)–1(b)(4)(iii)(C). *See also supra* section II.C.4.f. (discussing grandfathering for broker-dealers and covered persons with respect to the disqualification provisions). Advisers must have a reasonable basis for believing that the broker-dealer is not subject to such statutory disqualification, consistent with the adviser oversight and compliance provision applicable to testimonials and endorsements. Final rule 206(4)–1(b)(2)(i).

[500] Although Regulation BI does not explicitly require disclosure related to whether or not the broker-dealer is a current client or investor of the adviser, the Disclosure Obligation under Regulation BI requires the broker-dealer firm or representative to disclose that it is acting in a broker-dealer capacity, which we believe investors will generally understand to imply that the broker-dealer is not a client or investor of the adviser. Given this, we do not believe we need to separately require such a broker-dealer to disclose its status as a client or non-client.

[501] *See* Regulation Best Interest Release, *supra* footnote 146, at 14. Regulation BI applies when a broker-dealer makes a recommendation to a ''retail customer.'' *See id.*

[502] Final rule 206(4)–1(b)(4)(iii)(A).

[503] Final rule 206(4)–1(b)(4)(iii)(B).

[504] *Id.* However, the broker-dealer must clearly and prominently disclose: (A) That the testimonial was given by a current client or investor, or the endorsement was given by a person other than a current client or investor; (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and (C) a brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person. *See* final rule 206(4)–1(b)(1)(i).

[505] *See* final rule 206(4)–1(b)(1)(i).

[506] *See, e.g.,* Exchange Act section 10(b) and rules 10b–5, 10b–10(a)(2), 12b–20, 15c1–5, and 15c1–6 as well as FINRA rules 2010, 2020, 2262, 2269, and 5123.

[507] *See, e.g.,* FINRA rule 2210(d)(6).

[508] *See* FINRA rule 2210(a)(1). Although FINRA rule 2210(f) separately covers public appearances,

absent any exemption under the final rule, the rule will require the disclosures of compensation arrangements and material conflicts of interest associated with a testimonial or endorsement.[509]

The final rule does not provide an exemption for registered broker-dealers from the adviser oversight and compliance condition applicable to testimonials and endorsements, including the written agreement requirement. We continue to believe that advisers should reasonably ensure that a registered broker-dealer providing a testimonial or endorsement for the adviser is complying with the rule's applicable conditions. We believe that many advisers would already have an incentive to oversee any broker-dealers operating as their promoters and accordingly believe that this provision will provide an additional benefit to investors without being unduly burdensome. As noted above, in the context of private placements of private fund shares, we believe that a written private placement agreement would meet the final rule's written agreement requirement, further reducing the compliance burdens associated with this aspect of the rule.[510]

d. ''Covered Persons''

Under the final rule, similar to the partial exemption for registered broker-dealers, we are providing an exemption from the rule's disqualification provisions for ''covered persons'' under rule 506(d) of Regulation D with respect to a rule 506 securities offering, provided the person's involvement would not disqualify the offering under that rule.[511] With respect to rule 506 of Regulation D, ''covered persons'' include the issuer, its predecessors and affiliated issuers; directors, general partners, and managing members of the issuer; executive officers of the issuer, and other officers of the issuer that participate in the offering; beneficial owners of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; promoters connected to the issuer in any capacity at the time of sale; for pooled investment fund issuers, the fund's investment manager and any general partner, managing member, director, executive officer or other officer participating in the offering of any such investment manager; and persons compensated for soliciting investors, including any general partner, managing member, director, executive officer or other officer participating in the offering of any such solicitor.[512]

Commenters expressed concern that issuers and solicitors conducting private fund offerings in reliance on Regulation D would face increased compliance burdens in observing two sets of overlapping disqualification regulations.[513] Stating that a majority of private placements are carried out under rule 506, these commenters suggested we conform the rule's disqualification provisions to the provisions under rule 506 of Regulation D for solicitors of investors in private funds who would be newly subject to the solicitation rule, or that we provide an exemption from the final rule's disqualification provisions for persons that are subject to rule 506 of Regulation D.[514]

We agree with commenters that having one set of disqualifying events for promoters with respect to offerings conducted in reliance on rule 506 of Regulation D would streamline compliance processes and reduce the burden for such promoters. Additionally, similar to the statutory disqualification provisions under the Exchange Act, we believe that the disqualification provisions, or ''bad actor'' provisions, under Regulation D will serve the same policy goal as our final rule's disqualification provisions.[515] While we recognize that the two sets of disqualification provisions are not identical and that there are certain categories of disqualifying events that do not overlap, we do not believe that the differences justify having more than one set of disqualification provisions for compliance. Moreover, this exemption is narrowly limited to testimonials and endorsements that are in connection with a sale of securities under rule 506 of the Securities Act. Accordingly, in cases where a covered person's activity with respect to a rule 506 securities offering would be considered a testimonial or endorsement under our final rule, such covered person will not be subject to the disqualification provisions under our final rule so long as his or her involvement would not disqualify the offering under rule 506(d) under the Securities Act.[516]

Given that Regulation D does not have any similar provisions that are sufficient to replace our final rule's disclosure or adviser oversight and compliance provisions, covered persons under rule 506(d) of Regulation D will not be exempt from our rule's disclosure and adviser oversight and compliance obligations for testimonials and endorsements. Accordingly, similar to the exemption for registered broker-dealers, persons covered by rule 506(d) of Regulation D with respect to a rule 506 offering will still be subject to all other provisions of the final rule, to the extent that their activity falls within the scope of the rule, including the general prohibitions, performance provisions, and conditions applicable to testimonials and endorsements except the disqualification provisions.

e. No Exemptions for Impersonal Investment Advice and Nonprofit Programs

i. Impersonal Investment Advice

The proposed solicitation rule would have provided a partial exemption for solicitation activities for investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.[517] The proposed advertising rule did not provide any similar exemption. As a result of the merger of the two rules, the final rule will not have an exemption for promoters that refer investors for the provision of impersonal investment advice.[518]

One commenter supported our proposal to retain and modify the current exemption under the solicitation rule for solicitation activities related to the provision of impersonal investment advice.[519] This commenter stated that the exemption is a ''long-standing feature of the regime covering solicitation,'' and that our proposed

''communications'' consist of ''correspondence, retail communications, and institutional communications,'' all of which are defined as written communications. *See* FINRA rule 2210(a)(2), (3), and (5).

[509] *See* final rule 206(4)–1(b)(1).

[510] *See supra* footnote 361 and accompanying text.

[511] *See* final rule 206(4)–1(b)(4)(iv).

[512] *See* rule 506(d)(1) under the Securities Act.

[513] *See, e.g.,* Credit Suisse Comment Letter; SIFMA AMG Comment Letter I; MMI Comment Letter.

[514] *Id.*

[515] We believe that the two sets of provisions are sufficiently similar to help realize our policy goal of reducing the risk that certain ineligible persons should not be acting as promoters. For example, an offering is disqualified under rule 506(d) if a covered person is subject to any order of the Commission entered within five years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of: (i) Any scienter-based anti-fraud provision of the Federal securities laws; or (ii) section 5 of the Securities Act. *See* section 506(d)(1)(v) of the Securities Act. *See also* final rule 206(4)–1(e)(4)(v).

[516] Final rule 206(4)–1(b)(4)(iv).

[517] Proposed rule 206(4)–3(b)(1). Specifically, such solicitors would not have had to enter into a written agreement and provide the solicitor disclosure and would not have been subject to the adviser oversight and compliance provision. However, such solicitors would have been subject to the disqualification provisions under the proposed rule.

[518] Final rule 206(4)–1(b).

[519] SIFMA AMG Comment Letter I.

modifications such as removing the requirement to enter into a written agreement would improve aspects of the exemption. However, in the context of advertising, and testimonials and endorsements in particular, we do not believe that there should be any distinction made between personal and impersonal investment advice.[520] Many testimonials and endorsements, by their nature, will be used to promote and advertise an adviser's services, without taking into account a particular investor's objectives or needs. Accordingly, in such cases, we believe that investors should be afforded all protections of the final rule. A testimonial or endorsement serving as an advertisement for an adviser should not be exempt from providing disclosures when there is a material conflict of interest simply because the advertisement is related to the provision of impersonal investment advice instead of personal investment advice.

We stated in the proposal that the current and proposed solicitation rule provided a partial exemption for impersonal advisory services because we understood that ''prospective clients normally would be aware that a person selling such services was a salesman who was paid to do so.'' However, with respect to the proposed advertising rule, one commenter argued against regulations built on any underlying assumption that consumers are skilled at evaluating testimonials.[521] Other commenters argued against permitting testimonials and endorsements, raising concerns about investor confusion and inadvertent investor harm.[522] Although we continue to recognize that a potential investor may be aware of a promoter's incentive to sell, after considering comments, we believe that any use of testimonials or endorsements, subject to the final exemptions, needs certain protections. Accordingly, notwithstanding the fact that an adviser may offer impersonalized services, if an adviser's advertisement includes a testimonial or endorsement, then such advertisement will be subject to the final rule's provisions.

ii. Nonprofit Programs Exemption

The proposed solicitation rule would have exempted certain types of nonprofit programs from the substantive requirements of the rule, codifying the positions taken in previous staff no-action letters.[523] The proposed advertising rule provided no such exemption for testimonials or endorsements. The final marketing rule will not have an exemption for nonprofit programs.[524]

We proposed this exemption because we believed that the potential for the solicitor to demonstrate bias towards one adviser or another when there is no profit motive made the protections of the solicitation rule unnecessary.[525] One commenter supported the proposed exemption and suggested that the same type of approach could be helpful for for-profit entities that provide matching of investors and advisers based on objective criteria.[526] However, given the merger of the advertising and solicitation rules and our final rule's requirements, we no longer believe that an exemption for nonprofit programs would be appropriate or necessary. Instead, we believe the requirements of the final rule are important for investors even when the advertisement take the form of a testimonial or endorsement by a nonprofit program.

Among other things, our proposed solicitation rule would have required a separate solicitor disclosure that provided investors with certain information including the terms of compensation, and a written agreement between the adviser and solicitor describing the solicitation activities and requiring solicitor compliance with section 206 of the Act.[527] The proposed nonprofit programs exemption would have exempted advisers and solicitors from the requirements of the proposed solicitation rule including the written agreement and disclosure requirements, provided that the adviser and solicitor still met a number of conditions including some advisory oversight and different disclosures.[528]

Under the final rule, though we are not providing an exemption for nonprofit programs *per se,* we took into account that, if there is no or minimal compensation involved, the nonprofit program would fall under the *de minimis* exemption. As a result, many nonprofit programs may effectively be subject to the required disclosures and a part of the adviser oversight provision under the final rule, similar to the proposed exemption under the solicitation rule.[529] Under the final rule, the nonprofit program would need to disclose that it is not a current client of the adviser, the material terms of compensation, which, if any, would be similar to the disclosure under the proposed exemption,[530] and any material conflicts of interest. With respect to the adviser oversight provision, if the nonprofit program falls under the *de minimis* exemption,[531] advisers would only need to have a reasonable basis for believing that the nonprofit program complies with the final rule, rather than a number of specific items as proposed under the solicitation rule.[532]

We believe that the disclosure and advisory oversight requirements under

[520] *See* current rule 206(4)–1. The current advertising rule does not have any exemptions for advertisements related to impersonal investment advice.

[521] *See* TINA Comment Letter.

[522] *See* Mercer Comment Letter; NAPFA Comment Letter.

[523] Some solicitors have, from time to time, requested that the staff not recommend enforcement action under the cash solicitation rule for referral programs with some, or all, of these features. *See* National Football League Players Association, SEC Staff No-Action Letter (Jan. 25, 2002) (''NFLPA Letter''); Excellence in Advertising, Limited, SEC Staff No-Action Letter (Nov. 13, 1986) (''EIA Letter''); International Association for Financial Planning, SEC Staff No-Action Letter (June 1, 1998) (''IAFP Letter''). These staff no-action letters will be nullified following the rescission of the solicitation rule.

[524] *See* final rule 206(4)–1(b). The proposed solicitation rule would not have applied to an adviser's participation in a program when the adviser had a reasonable basis for believing that the solicitor is a nonprofit program, participating advisers compensated the solicitor only for the costs reasonably incurred in operating the program, and the solicitor provided clients a list, based on non-qualitative criteria, of at least two advisers. *See* proposed rule 206(4)–3(b)(4). There is no special exception made for nonprofit programs under the current advertising rule.

[525] 2019 Proposing Release, *supra* footnote 7, at section II.B.7.

[526] SIFMA AMG Comment Letter I.

[527] *See* proposed rule 206(4)–3(a)(1).

[528] *See* proposed rule 206(4)–3(b)(4), which would have required that: (i) The adviser have a ''reasonable basis for believing'' that among other things, the solicitor is a nonprofit program and that the solicitor (or adviser) ''prominently discloses to the client, at the time of any solicitation activities,'' certain information; and (ii) solicitor or adviser disclose: (1) The criteria for inclusion on the list of investment advisers; and (2) that investment advisers reimburse the solicitor for the costs reasonably incurred in operating the program.

[529] *See* final rule 206(4)–1(b)(4)(i). The proposed nonprofit program exemption would have required that the client receive certain disclosures. *See* proposed rule 206(4)–3(b)(4)(ii). The exemption would have also had a ''reasonable basis'' standard for the adviser's reliance on the exemption. *See* proposed rule 206(4)–3(b)(4)(i). As with the *de minimis* exemption, nonprofit programs would not have been subject to the disqualification provisions under the proposed rule. *See* proposed rule 206(4)–3(b)(4). Since a person or program would be unlikely to demonstrate bias in referring one adviser over another when neither adviser provides compensation based on the number of referrals made or any other indicator of the potential to earn the adviser profit, we believed, and continue to believe, that an exemption from the disqualification provisions in such cases is appropriate.

[530] The proposed exemption would have required that the solicitor or adviser disclose to the client that investment advisers reimburse the solicitor for the costs reasonably incurred in operating the client. Proposed rule 206(4)–3(b)(4)(ii)(B).

[531] Such a program within the *de minimis* exemption will not be subject to the written agreement requirement under the adviser oversight and compliance provision. Final rule 206(4)–1(b)(2)(ii) and (b)(4)(i).

[532] *See* proposed rule 206(4)–3(b)(4)(i).

the final rule are more appropriate than, and preferable to, the more tailored disclosures and conditions that were proposed under the nonprofit program exemption. Accordingly, we believe eliminating the proposed nonprofit program exemption is appropriate, and the final rule will subject advisers participating in any referral program, whether nonprofit or for profit, to the rule in order to provide investors with sufficient and necessary information when presented with a testimonial or endorsement of an adviser by such a program. Absent the *de minimis* or other exemption, the rule will subject all referral programs that provide testimonials or endorsements to the required disclosures, adviser oversight and disqualification provisions.

*D. Third-Party Ratings*

As proposed, the final rule will prohibit including third-party ratings in an advertisement, unless they comply with the rule's general prohibitions and additional conditions. An investment adviser may not include a third-party rating in its advertisement unless the adviser has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating meets certain criteria and provides certain disclosures. Several commenters supported the proposed rule's approach of expressly permitting the inclusion of third-party ratings in advertisements.[533] However, one commenter requested that we prohibit third-party ratings in retail advertisements, arguing that advisers will be incentivized to purchase only positive third-party ratings and aggressively market them to mislead investors.[534] We believe that the final rule's conditions for including third-party ratings in an advertisement, discussed in more detail below, in conjunction with the rule's general prohibitions, mitigate any such incentives and safeguard investors from misleading third-party ratings.

The final rule will, as proposed, define ''third-party rating'' as a ''rating or ranking of an investment adviser provided by a person who is not a *related person* (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business.'' [535] This definition is intended to permit advisers to use third-party ratings, subject to conditions, when the ratings are conducted in the ordinary course of business. We continue to believe that the ordinary course of business requirement would largely correspond to persons with the experience to develop and promote ratings based on relevant criteria. It would also distinguish third-party ratings from testimonials and endorsements that resemble third-party ratings, but that are not made by persons who are in the business of providing ratings or rankings. The requirement that the provider not be an adviser's related person will avoid the risk that certain affiliations could result in a biased rating.

The final rule also will subject advertisements that include third-party ratings to additional tailored conditions, as proposed. For such advertisements, the final rule will require that the investment adviser have a reasonable basis to believe that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result (the ''due diligence requirement'').[536] The final rule also will require that an investment adviser clearly and prominently disclose, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses: (i) The date on which the rating was given and the period of time upon which the rating was based; (ii) the identity of the third-party that created and tabulated the rating; and (iii) if applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating (the ''disclosure requirement'').[537] In order to be clear and prominent, the disclosure must be at least as prominent as the third-party rating.[538] While we are adopting the conditions required for including any third-party rating in an advertisement largely as proposed, we are providing additional clarification on how advisers can comply with such conditions.

Several commenters requested guidance on how an adviser can satisfy the due diligence requirement.[539] We continue to believe that an adviser could satisfy the requirement by accessing the questionnaire or survey that was used in the preparation of the rating. We are persuaded by commenters' concerns, however, that third-party rating agencies may be reluctant to share proprietary survey or questionnaire information to advisers, such as their calculation methodology.[540] Accordingly, we are clarifying that obtaining the questionnaire or survey used in the preparation of the rating is not the only means to satisfy this requirement. We also do not believe that this condition requires an adviser to obtain complete information about how the third-party rating agency collects underlying data or calculates a rating, as one commenter suggested.[541] Nevertheless, we continue to believe that an adviser relying solely on the results of a survey or questionnaire—*i.e.,* the rating itself—without conducting some due diligence into the underlying methodology and structure, could give rise to advertisements that include misleading ratings. To satisfy the due diligence requirement, an adviser could seek representations from the third-party rating agency regarding general aspects of how the survey or questionnaire is designed, structured, and administered. Alternatively, a third-party rating provider may publicly disclose similar information about its survey or questionnaire methodology. In either case, the adviser could obtain sufficient information to formulate a reasonable belief as required by the due diligence requirement without obtaining proprietary data of third-party rating agencies.

The first provision of the disclosure requirement—the date on which the rating was given and the period of time upon which the rating was based—will assist investors in evaluating the relevance of the rating. Ratings from an earlier date, or that are based on information from an earlier period, may not reflect the current state of an

[533] *See, e.g.,* Blackrock Comment Letter; IAA Comment Letter.

[534] *See* NASAA Comment Letter.

[535] Rule 206(4)–1(e)(17). An adviser's ''related person'' is defined in Form ADV's Glossary of Terms as ''[a]ny *advisory affiliate* and any *person* that is under common *control* with your firm.'' Italicized terms are defined in the Form ADV Glossary. We believe that a rating by a person under common control with the adviser could present the same bias towards the adviser as a rating by an adviser's other advisory affiliates.

[536] *See* final rule 206(4)–1(c).

[537] *See id.*

[538] Commenters claimed that a ''clearly and prominently'' disclosure standard would pose challenges for certain advertisements, including advertisements on certain social media or internet platforms, if hyperlinking is not permitted. *See, e.g.,* Fidelity Comment Letter; LinkedIn Comment Letter; MMI Comment Letter. As discussed above, we continue to believe that it would not be consistent with the clear and prominent standard to use a hyperlink to include the disclosures required under the final rule. *See supra* section II.C.2.a. Instead, such required disclosures should be included within the advertisement.

[539] *See, e.g.,* Blackrock Comment Letter (suggesting that firms might not be willing to provide proprietary survey methodology information to advisers); MFA/AIMA Comment Letter I; IAA Comment Letter; AIC Comment Letter.

[540] *See, e.g.,* Blackrock Comment Letter; AIC Comment Letter.

[541] *See* IAA Comment Letter.

investment adviser's business. An advertisement that includes an older rating would be misleading without clear and prominent disclosure of the rating's date.[542]

The second provision of the disclosure requirement—the identity of the third party that created the rating—is important because it will provide investors with the opportunity to assess the qualifications and credibility of the rating provider. Investors can look up a third party by name and find relevant information, if available, about the third party's qualifications and can form their own opinions about credibility.

The final provision of the disclosure requirement—that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating—provides consumers with important context for weighing the relevance of the statement in light of the compensation incentive.[543] Although the final rule uses the term ''compensation,'' this term continues to refer to cash and non-cash compensation, as proposed. Similarly, the final rule replaces the phrase ''by or on behalf'' with ''directly or indirectly.'' As discussed above, this reflects a non-substantive change to use a phrase that we believe is commonly understood in the industry.[544]

While the final rule explicitly requires these three disclosures, they would not cure a rating that could otherwise be false or misleading under the final rule's general prohibitions or under the general anti-fraud provisions of the Federal securities laws. For example, where an adviser's advertisement references a recent rating and discloses the date, but the rating is based upon on an aspect of the adviser's business that has since materially changed, the advertisement would be misleading. Likewise, an adviser's advertisement would be misleading if it indicates that the adviser is rated highly without disclosing that the rating is based solely on a criterion, such as assets under management, that may not relate to the quality of the investment advice.

*E. Performance Advertising*

The final rule's general prohibitions apply to advertisements that include performance results (''performance advertising''), as proposed. We are adopting specific requirements and restrictions for performance advertising, with some changes from the proposal as described below. We continue to believe that performance advertising raises special concerns that warrant additional requirements and restrictions under the final marketing rule.[545] In particular, the presentation of performance could lead reasonable investors to unwarranted assumptions and thus would result in a misleading advertisement.[546] Some commenters objected to the proposed rule's specific performance advertising provisions, favoring relying only on the rule's general prohibitions for non-retail investors.[547] However, commenters generally did not advocate for the removal of the performance advertising provisions as a whole. After considering comments, we remain convinced that additional protections should apply to advertisements that include performance results.

We proposed several requirements for all advertisements that include performance advertising. Specifically, under our proposal, an advertisement could not: (i) Include gross performance, unless the advertisement provided or offered to provide a schedule of fees and expenses deducted to calculate net performance (the ''proposed schedule of fees requirement''); (ii) contain any statement that the performance results have been approved or reviewed by the Commission (the ''Commission approval requirement''); and (iii) provide related, extracted, or hypothetical performance without meeting specific conditions.[548] For Retail Advertisements,[549] our proposal also would have required that: (i) Any presentation of gross performance also include net performance, subject to conditions (the ''net performance requirement''); and (ii) any performance results of a portfolio or composite aggregation of related portfolios include performance results for one-, five-, and ten-year periods, subject to conditions (the ''time period requirement'').[550] As discussed in more detail below, the final rule substantially adopts the proposed rule's requirements, and applies them to all advertisements that include performance advertising. Unlike the proposed rule, the final rule does not provide separate requirements for performance advertising in Retail Advertisements and Non-Retail Advertisements and will not include the proposed schedule of fees requirement.

1. Net Performance Requirement; Elimination of Proposed Schedule of Fees Requirement

The final rule will prohibit any presentation of gross performance in an advertisement unless the advertisement also presents net performance (i) with at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and (ii) calculated over the same time period, and using the same type of return and methodology as, the gross performance.[551] The final rule applies the net performance requirement to *all* advertisements, not only to Retail Advertisements and, in turn, eliminates the proposed schedule of fees requirement.[552] We discuss below the benefits of expanding the net performance requirement to all performance advertisements in light of the removal of the proposed schedule of fees requirement, and the anticipated effects on advisers.

Some commenters supported our proposal to require advisers that present gross performance in Retail Advertisements to present net performance.[553] They agreed that presentations of net performance help demonstrate the effect that fees and expenses will have on future performance. One commenter also stated that providing net performance information to Non-Retail Persons alerts

[542] In addition, an adviser would be required to provide contextual disclosures of subsequent, less-favorable performance in the rating, if applicable. *See* final rule 206(4)–1(a).

[543] In many cases, third-party ratings are developed by relying significantly on questionnaires or client surveys and involve different compensation models. For example, some investment advisers compensate the third-party ratings firm for the right to include the ratings or rankings that are calculated as a result of the survey in their advertisements. Other investment advisers compensate the third-party ratings firm to be included in the initial pool of advisers from which the rating or ranking is determined.

[544] *See supra* section II.A.

[545] *See* 2019 Proposing Release, *supra* footnote 7, at text accompanying n. 181.

[546] For example, investors may rely particularly heavily on advertised performance results in choosing whether to hire or retain an investment adviser or invest in a private fund managed by the adviser. This reliance may be misplaced to the extent that an investor considers past performance achieved by an investment adviser to be predictive of the results that the investment adviser will achieve for the investor.

[547] *See, e.g.,* MFA/AIMA Comment Letter I; AIC Comment Letter I.

[548] Proposed rule 206(4)–1(c)(1).

[549] We proposed to define clients and investors that are ''qualified purchasers'' or ''knowledgeable employees'' as ''Non-Retail Persons'' and to define all other clients and investors as ''Retail Persons.'' *See* proposed rule 206(4)–1(e)(8) and (14). Similarly, the proposed rule distinguished between advertisements for which an adviser has adopted and implemented policies and procedures reasonably designed to ensure that the advertisements are disseminated solely to Non-Retail Persons as ''Non-Retail Advertisements'' and all other advertisements as ''Retail Advertisements.'' *See* proposed rule 206(4)–1(e)(7) and (13).

[550] Proposed rule 206(4)–1(c)(2).

[551] Final rule 206(4)–1(d)(1).

[552] *Id.*

[553] *See* Consumer Federation Comment Letter; CFA Institute Comment Letter; Proskauer Comment Letter. The majority of commenters who responded via the Investor Feedback Flyer marked net performance results as ''Very Important.''

them to the fact that fees and expenses may significantly reduce performance.[554]

Some commenters also supported our proposal to allow advisers to exclude net performance in Non-Retail Advertisements, stating that Non-Retail Persons are often not at risk of being misled by gross performance.[555] However, another commenter stated that many Non-Retail Persons investing in private funds prefer to receive both net and gross performance results in advertisements because it provides an opportunity to cross check the investors' net performance calculations against advisers' calculations.[556]

In addition, while some commenters supported permitting different performance presentations in Retail and Non-Retail Advertisements,[557] other commenters stated that it could create operational, administrative, and compliance burdens for advisers, and significant potential for errors.[558] Some commenters stated that advisers would face difficulties in controlling the distribution of Non-Retail Advertisements pursuant to policies and procedures that would be required under the proposal.[559] A few commenters also raised concerns that in some cases Retail and Non-Retail Persons may invest in the same fund, but may receive different types or levels of information because of the proposed rule's bifurcated approach.[560]

After considering comments, we believe that the net performance requirement is reasonably designed to prevent all types of prospective clients and private fund investors from being misled by the presentation of gross performance in an advertisement. Presenting gross performance alone in this context may imply that investors received the full amount of the presented returns, when the fees and expenses paid in connection with the investment adviser's investment advisory services would reduce the returns to investors. Presenting gross performance alone also may be misleading to the extent that amounts paid in fees and expenses are not deducted and thus not compounded in calculating the returns. In addition, we believe that presenting net performance in all advertisements will help illustrate for investors the effect of fees and expenses on the advertised performance results and allow all investors to compare the adviser's performance presentation with their own calculations, if applicable. We do not believe the burden will be considerable given that many advisers already present net performance.[561]

Given the operational complexity and challenges that commenters noted, as well as changes we are making to the final rule to streamline the performance presentation requirements for all advisers, we are persuaded that the rule should no longer provide different flexibility for advertisements to Non-Retail Persons. Accordingly, the final rule implements changes from the proposed rule that we believe, when viewed as a whole, simplify the rule's compliance for all advisers, while preserving and promoting protection for all investors. In particular, we are eliminating the proposed schedule of fees requirement. Commenters stated that this requirement could be overly burdensome for advisers and may not provide relevant information to investors.[562] Some commenters also stated that Non-Retail Persons are in a position to negotiate for appropriately tailored disclosures based on their particular needs.[563] While one commenter disagreed, arguing that investors in private funds (including Non-Retail Persons) sometimes have difficulty obtaining information regarding fees and expenses for complex products,[564] we believe requiring net performance for all advertisements with appropriate disclosures will alert investors to the effect of fees on an adviser's performance results.

As proposed, the final rule will not prescribe disclosure requirements for net and gross performance presentations. Instead, an adviser would need to comply with the final rule's general prohibitions. Comments were mixed on this aspect of the proposal.[565] We continue to believe, however, that advisers should evaluate the particular facts and circumstances that may be relevant to investors, including the assumptions, factors, and conditions that contributed to the performance, and include appropriate disclosures or other information such that the advertisement does not violate the prohibitions in paragraph (a) of the final rule or other applicable law. Depending on the facts and circumstances, disclosures may include: (1) The material conditions, objectives, and investment strategies used to obtain the results portrayed; (2) whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings; (3) the effect of material market or economic conditions on the results portrayed; (4) the possibility of loss; and (5) the material facts relevant to any comparison made to the results of an index or other benchmark.[566]

a. Definition of Gross Performance

Similar to the proposal, both ''gross performance'' and ''net performance'' will be defined by reference to a ''portfolio,'' which is defined as ''a group of investments managed by the investment adviser'' and can include ''an account or private fund.'' [567] Under the final rule, ''gross performance'' is defined to mean the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant

[554] *See* NYC Bar Comment Letter (expressing this idea in the context of its overall argument that the rule should not require an adviser to provide (or offer to provide) a schedule of fees and expenses to Non-Retail Persons when also presenting net performance).

[555] *See, e.g.,* IAA Comment Letter; Proskauer Comment Letter (stating that for Non-Retail Persons, disclosure that gross performance is gross and not net is sufficient); CFA Institute Comment Letter; MFA/AIMA Comment Letter I; Blackrock Comment Letter.

[556] *See* ILPA Comment Letter.

[557] *See, e.g.,* CFA Institute Comment Letter; Consumer Federation Comment Letter.

[558] *See, e.g.,* NYC Bar Comment Letter; NSCP Comment Letter; AIC Comment Letter I; NAPFA Comment Letter; ACG Comment Letter.

[559] *See, e.g.,* NSCP Comment Letter; IAA Comment Letter (stating that prospective investors typically do not provide information about their retail or non-retail status at the marketing stage, and stating that in the case of non-U.S. investors, this information is generally not gathered at any stage).

[560] *See* Ropes & Gray Comment Letter; Association for Corporate Growth Comment Letter. For example, a private fund that relies on section 3(c)(1) of the Investment Company Act may have investors that qualify as Retail and Non-Retail Persons under the proposed amendments to the advertising rule. Retail Persons would receive different disclosures under the proposal, raising the possibility of unequal treatment and potential questions about fair disclosure. *See* proposed rule 206(4)–1(c)(1) and (2).

[561] *See* CFA Institute Comment Letter.

[562] *See, e.g.,* MFA/AIMA Comment Letter I; IAA Comment Letter; CFA Institute Comment Letter (stating that they do not believe it is feasible for an adviser that presents gross returns to provide the proposed fee schedule, but that advisers should disclose certain information about fees a client will pay).

[563] *See* MFA/AIMA Comment Letter I; NYC Bar Comment Letter.

[564] *See* ILPA Comment Letter.

[565] *See, e.g.,* NAPFA Comment Letter (opposing additional disclosure requirements); NRS Comment Letter (supporting additional disclosure requirements*). See also* ILPA Comment Letter (requesting that the Commission incorporate specific disclosures for non-retail investors reviewing private equity fund performance advertising).

[566] *See* 2019 Proposing Release, *supra* footnote 7, at nn.191–195.

[567] Final rule 206(4)–1(e)(11). *See also* proposed rule 206(4)–1(e)(10).

portfolio.[568] We are adopting the definition of gross performance as proposed, with one change to require, as a commenter requested, that advisers that show extracted performance in accordance with the final marketing rule must show net and gross performance for the applicable subset of investments extracted from a portfolio.[569] This change clarifies that gross performance applies not only to an entire portfolio but also to a portion of a portfolio that is included in extracted performance.

Gross performance does not show the impact of all fees and expenses that the adviser's existing investors have borne or that prospective investors would bear, which can be relevant to an evaluation of the investment experience of the adviser's advisory clients and/or investors in private funds advised by the investment adviser.[570] While commenters generally supported the proposed definition of gross performance, some requested that we clarify the types of fees and expenses advisers must deduct in calculating gross performance.[571] For example, some commenters requested we specify that gross returns should reflect the deduction of transaction costs, if any exist.[572] One of these commenters also requested that we add a definition for ''pure gross returns'' (*i.e.,* returns that do not reflect the deduction of any transaction costs), and require advisers to make additional disclosures when presenting pure gross returns in advertisements.[573] The same commenter requested that we clarify that advisory fees paid to underlying investment vehicles must be deducted from gross performance.

Like the proposed rule, the final rule does not prescribe any particular calculation of gross performance. For example, many private funds use money-weighted returns instead of time-weighted returns.[574] Under the final rule, advisers may use the type of returns appropriate for their strategies provided that the usage does not violate the rule's general prohibitions, and, if applicable, subject to the requirements discussed below.[575] We continue to believe that, because of the variation among types of advisers and investments, prescribing the calculation could unduly limit the ability of advisers to present performance information that they believe would be most relevant and useful to an advertisement's audience. However, if an investment adviser calculates the performance of a portfolio in part by deducting transaction fees and expenses, but deducts no other fees or expenses, then such performance would be ''gross performance.'' If an investment adviser's calculation of performance reflects the deduction of advisory fees paid to an underlying investment vehicle before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio, then such performance would be ''gross performance.''

It would be misleading to present gross performance information without providing appropriate disclosure about gross performance, taking into account the particular facts and circumstances of the advertised performance. Advisers generally should describe the type of performance return presented in the advertisement. For example, an advertisement may or may not present the performance of a portfolio using a return that accounts for the cash flows into and out of the portfolio. In either case, under the final rule, an adviser generally should disclose what elements are included in the return presented so that the audience can understand, for example, how it reflects cash flow and other relevant factors. Similarly, if an adviser's presentation of gross performance does not reflect the deduction of transaction fees and expenses, an adviser should disclose that fact to avoid being misleading, if it would not be clear to the investor from the context of the advertisement.[576]

b. Definition of Net Performance

We are adopting the definition of net performance as proposed, with some modifications. First, as with gross performance and for the same reasons, the final rule provides that net performance applies not only to an entire portfolio but also to a portion of a portfolio that is included in extracted performance. Second, we are specifying when advisers may exclude certain custodian fees paid to third parties. Third, we are prescribing some aspects of the calculation of net performance using model fees.

The final rule defines ''net performance'' to mean, in part, the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio.[577] Once an adviser establishes the ''portfolio'' for which performance results are presented, the adviser must determine the fees and expenses borne by the owner of the portfolio and then deduct those to establish the ''net performance.''

The final rule includes a non-exhaustive list of the types of fees and expenses to be considered in preparing net performance that is identical to the proposal.[578] This list includes, if applicable, advisory fees, advisory fees paid to underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. It illustrates fees and expenses that clients or investors bear in connection with the services they receive. In addition, ''net performance'' may exclude custodian fees paid to a bank or other third-party organization for safekeeping funds and securities. Finally, the final rule permits the use of a model fee in calculating net performance in an advertisement, subject to conditions.

A few commenters supported the proposed definition of net performance.[579] Some commenters, however, requested we prescribe additional requirements for net performance calculations, including specific requirements for certain private funds.[580] For example, one commenter

[568] Final rule 206(4)–1(e)(7).

[569] *See* CFA Institute Comment Letter. *See infra* section II.E.5 (discussing extracted performance).

[570] *See* 2019 Proposing Release, *supra* footnote 7, at text accompanying nn.235–236.

[571] *See, e.g.,* IAA Comment Letter; CFA Institute Comment Letter.

[572] *See* IAA Comment Letter (recommending for all cases where an investment adviser has discretion and is responsible for the execution of client transactions); CFA Institute Comment Letter (recommending for all presentations of gross returns other than those the adviser describes as ''pure gross returns'').

[573] CFA Institute Comment Letter (''Pure gross returns are commonly used when transaction costs are bundled with investment management fees, such as in a wrap fee arrangement.''). This commenter also requested that we clarify whether returns of accounts that pay zero commissions are gross returns or pure gross returns.

[574] *See, e.g.,* CFA Institute Comment Letter.

[575] *See, e.g., supra* section II.B; *infra* section II.E.

[576] Even though we are not adopting a definition of ''pure gross performance,'' as one commenter suggested, we believe that any adviser that presents such performance results in addition to gross performance and net performance should identify pure gross returns and disclose that pure gross returns do not reflect the deduction of transaction costs, to avoid misleading recipients of the advertisement.

[577] Final rule 206(4)–1(e)(10).

[578] *See* proposed rule 206(4)–1(e)(6).

[579] *See* IAA Comment Letter; MFA/AIMA Comment Letter I; NRS Comment Letter.

[580] *See* Consumer Federation Comment Letter (stating that the Commission should require advisers to comply with a uniform set of principles when calculating performance). *See also* CFA

recommended that, when clients cannot ''opt out'' of custody or other administrative costs, the rule should expressly require the adviser to deduct these fees and costs when presenting net returns of a specific pooled investment vehicle.[581] This commenter requested that we clarify that when presenting net performance of a specific pooled fund, advisers must deduct administrative fees, as required when complying with the CFA Institute's Global Investment Performance Standards (''GIPS standards''). Some commenters supported our proposal not to prescribe specific calculations, stating that there is no single correct way to calculate returns.[582] Some of these commenters also requested we clarify that net performance calculations in advertisements must reflect the deduction of any transaction costs and investment advisory fees (including any performance-based fees or carried interest). One commenter requested clarification that net performance fees exclude taxes on gains generated in a portfolio.[583]

As proposed, the final rule does not prescribe any particular calculation of net performance. We believe that prescribing the calculation of net performance could unduly limit the ability of advisers to present performance information that they believe would be most relevant and useful to an advertisement's audience. Therefore, the final rule's definition continues to include a non-exhaustive list of the types of fees and expenses to be considered in preparing net performance. We decline, however, to enumerate all potential private fund fees and expenses, as one commenter suggested.[584] Instead, the final rule's definition of net performance requires the deduction of private fund fees and expenses that the investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant fund.

However, we are clarifying in response to some commenters that any adviser that deducts applicable transaction fees and expenses, or advisory fees paid to an underlying investment vehicle, when calculating gross performance should also do so for net performance. We are also clarifying that, under the final rule's definition of net performance, advisory fees include performance-based fees and performance allocations that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio. With respect to administrative fees and expenses that a commenter raised, whether a client or investor pays them in connection with the investment adviser's advisory services (and therefore they must be deducted) depends on the facts and circumstances. For example, if an adviser agrees to bear certain administrative fees as a result of negotiations with investors in the private fund, or if an investor agrees to directly bear them, we do not believe that those fees should be included in the calculation of net performance. In response to a commenter discussed above, we believe that capital gains taxes paid outside of the portfolio are not fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services (and are therefore not required to be deducted in the calculation of net performance).[585]

In addition, as proposed, the definition of net performance refers to the deduction of all fees that an investor ''has paid or would have paid'' in connection with the services provided. That is, where hypothetical performance is permissibly advertised under the final rule, net performance should reflect the fees and expenses that ''would have'' been paid if the hypothetical performance had been achieved by an actual portfolio.[586]

c. Deduction of Custodian Fees Paid to a Bank or Other Third-Party Organization

Under the final rule, presentation of ''net performance'' in an advertisement may exclude custodian fees paid to a bank or other third-party organization for safekeeping funds and securities, as proposed.[587] We understand that advisory clients commonly select and directly pay custodians, and in such cases, advisers may not have knowledge of the amount of such custodian fees to deduct for purposes of establishing net performance.

One commenter supported this treatment for non-pooled investment vehicles, stating that the rule should not require an adviser to reflect the deduction of custodian fees when clients select their custodians.[588] However, this commenter also recommended that the rule expressly require custody fee deduction if a client cannot ''opt-out'' of paying those fees.

After considering comments, we continue to believe that the final rule should allow an adviser to exclude custodian fees paid to third parties given a client may control custodian selection (and accompanying fees). We believe that this approach is appropriate even where advisers know the amount of custodian fees—*e.g.,* where the adviser recommended the custodian. However, to the extent a client or investor pays an adviser, rather than a third party, for custodial services, then the adviser must deduct the custodial fee in calculating net performance for purposes of the advertisement. This will be the case, for example, when an adviser provides custodial services with respect to funds or securities for which the performance is presented and charges a separate fee for those services, or when custodial fees are included in a single fee paid to the adviser, such as if they are included in wrap fee programs. This would also be the case when a client or investor reimburses the investment adviser for third-party custodian fees.

d. Deduction of Model Fees

Under the final rule, presentation of ''net performance'' in advertisements may reflect the deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted, as proposed.[589] This will result in performance that is no higher than if the adviser deducted actual fees. For example, in a private fund with multiple series or classes where each series or class has different fees, an adviser may display the performance of the highest fee class. We did not receive any comments on this aspect of the proposal. Advisers may choose this modification to ease calculating net performance. When an adviser advertises net performance that is no higher than if deducting actual fees, there appears to be little chance of misleading the audience into believing that investors received better returns than they actually did.[590]

Institute Comment Letter; ILPA Comment Letter (both letters discussing particular concerns regarding private equity funds).

[581] *See* CFA Institute Comment Letter.

[582] *See, e.g.,* IAA Comment Letter; NRS Comment Letter.

[583] *See* Resolute Comment Letter.

[584] *See* ILPA Comment Letter.

[585] *See* Resolute Comment Letter.

[586] Final rule 206(4)–1(e)(10).

[587] Final rule 206(4)–1(e)(10)(i). *See* proposed rule 206(4)–1(e)(6)(iii).

[588] *See* CFA Institute Comment Letter. *See also* IAA Comment Letter (supporting permitting the exclusion of custodian fees, generally).

[589] Final rule 206(4)–1(e)(10)(ii)(A).

[590] If the fee to be charged to the intended audience is anticipated to be higher than the actual fees charged, the adviser must use a model fee that reflects the anticipated fee to be charged in order not to violate the rule's general prohibitions. *See id. See also* final rule 206(4)–1(a).

The rule also will allow net performance to reflect the deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated, similar to as proposed.[591] We continue to believe that allowing advisers to present net performance that reflects the deduction of this type of model fee may be useful for advisers who manage a particular strategy for different types of investors. For example, under the final rule, an adviser managing several accounts, each using the same investment strategy, could present in an advertisement the gross and net performance of all such accounts. For net performance, the adviser may deduct a model fee equal to the highest fee charged to retail investors (assuming an intended retail audience). This provision of the definition of net performance does not permit net performance that reflects a model fee that is not available to the intended audience. One commenter requested that we permit advisers to deduct model fees that reflect either the highest fee that was charged historically or the highest potential fee that it will charge the investors or clients receiving the particular advertisement, provided the performance is accompanied by appropriate disclosure.[592] Under the final rule, an adviser does not have discretion to choose the model fee to use in calculating net performance—it must use the higher of these two model fees.[593]

Another commenter supported this provision, but stated that where an adviser has not yet managed an actual account for clients or investors similar to the relevant audience, the rule should permit the adviser to deduct a model fee that is equal to the highest fee to be charged to relevant audience.[594] We agree, and the final rule requires the use of such a model fee.[595]

Another commenter expressed concern that the proposed rule would require an adviser to overstate its normal fee, when deducting a model fee, because the adviser had previously charged a client a higher fee for unique relationship servicing requirements.[596] If an adviser charged a higher fee for unique services that it does not intend to provide in the future to the intended audience for the advertisement, the portfolio may be outside of the scope of the adviser's performance calculation. For example, it may not meet the criteria for a related portfolio and, in that case, should not be included in the calculation of related performance.

Similarly, one commenter stated that the rule should not require an adviser to deduct a model fee when presenting performance of a portfolio of a non-fee paying client.[597] This commenter requested that we instead permit such adviser to calculate net performance returns using actual investment management fees (*i.e.,* zero fees) and disclose the percentage of assets under management represented by non-fee paying portfolios. Further, this commenter stated that the GIPS standards do not require the application of a model fee to non-fee-paying portfolios to calculate net returns, and that requiring it in the final rule may result in many advisers being required to restate historical performance. We believe this presentation could mislead investors to believe that they could receive returns as high as non-fee paying clients, even with the commenter's proposed disclosure. In the 2019 Proposing Release, we expressed similar concerns with presenting related performance of accounts with fee waivers or reduced rates unavailable to unaffiliated clients of the adviser.[598] Accordingly, to satisfy the final rule's general prohibitions, an adviser generally should apply a model fee that reflects either the highest fee that was charged historically or the highest potential fee that it will charge the investors or clients receiving the particular advertisement.

One commenter requested clarification that model fees also may exclude custodian fees that would be paid to a bank or other third-party organization.[599] We agree that an adviser that uses a model fee in accordance with the final rule may also exclude custodian fees if otherwise permitted under the final rule.

e. Conditions for Presentation

As proposed, the final rule will require that net performance be presented in the advertisement with at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance, and calculated over the same time period, and using the same type of return and methodology as, the gross performance.[600] These conditions are designed to help ensure that net performance effectively conveys to the audience information about the effect of fees and expenses on the relevant performance. A calculation of net performance over a different time period or using a different type of return or methodology would not necessarily provide information about the effect of fees and expenses. Only one commenter discussed this condition and recommended that the Commission encourage advisers to be certain that the layout of the information presented is not misleading.[601] As described above, advertisements containing any performance presentation will be subject to the rule's general prohibitions.

2. Prescribed Time Periods

Our final rule also adopts the proposed one-, five-, and ten-year time period requirement for the presentation of performance results in an advertisement, with some modifications from the proposed rule. First, the final rule applies the time period requirement to all advertisements (with a new exception for private funds), rather than only to Retail Advertisements, as proposed.[602] Second, prescribed time periods must end on a date that is no less recent than the most recent calendar year-end, rather than the most recent practicable date, as proposed.[603] As proposed, this time period requirement will apply to all performance results, including gross and net performance, and including any composite aggregation of related portfolios. Also, as proposed, if the relevant portfolio did not exist for a particular prescribed period, then an adviser must present performance information for the life of the portfolio.[604] For example, if a portfolio has been in existence for seven years, then the adviser must show

[591] Final rule 206(4)–1(e)(10)(ii)(B). The final rule reflects one change from the proposal, in response to a commenter that requested that we conform the phrase ''relevant audience'' in the proposed rule's model fee provision, to other parts of the rule. *See* CFA Institute Comment Letter. We agree, and have revised the provision to refer to the ''intended audience to whom the advertisement is disseminated.''

[592] *See* MMI Comment Letter.

[593] *See supra* footnote 590 (discussing the final rule's first model fee provision and the general prohibitions). As discussed above, net performance that reflects a model fee that is not available to the intended audience is not permitted under the final rule's second model fee provision.

[594] *See* CFA Institute Comment Letter.

[595] *See* final rule 206(4)–1(e)(10) (referring, in the definition of net performance, to the deduction of all fees and expenses that a client or investor ''would have paid''). An adviser could use such a model fee pursuant to the second model fee provision. Final rule 206(4)–1(e)(10)(ii)(B).

[596] *See* Wellington Comment Letter.

[597] *See* CFA Institute Comment Letter.

[598] *See* 2019 Proposing Release, *supra* footnote 7, at text following footnote 288.

[599] *See* IAA Comment Letter.

[600] Final rule 206(4)–1(d)(1)(i) and (ii).

[601] *See* CFA Institute Comment Letter.

[602] Final rule 206(4)–1(d)(2). *See* proposed rule 206(4)–1(c)(2)(ii).

[603] *See id.*

[604] *See id.*

performance results for one- and five-year periods, as well as for the seven-year period. An investment adviser is free to include performance results for other periods as long as the advertisement also presents results for the prescribed time periods, and otherwise complies with the requirements of the final rule.[605]

The final rule also adopts the proposed requirement that the prescribed time periods be presented with equal prominence in the advertisement, so that an investor can observe the history of the adviser's performance on a short-term and long-term basis.[606] An adviser may not highlight the single one-, five-, or ten-year period that shows the best performance, instead of showing them in relation to each other.

We believe this standardized presentation provides the audience with insight into the experience of the investment adviser over set periods that are likely to reflect how the advertised portfolio(s) performed during different market or economic conditions. For portfolios in existence for at least ten years, performance for that period could provide investors with more complete information than only performance over the most recent year. That performance may prompt investors to seek additional information from advisers regarding the causes of significant changes in performance over longer periods. Some commenters supported this aspect of the proposal for this reason.[607] These commenters also stated that this information would aid investors in comparing different performance advertisements and reduce the risk that advisers would present performance based on cherry-picked periods.

Several commenters stated that the proposed time period requirement for closed-end private funds, however, would be inappropriate and confusing for investors, in part, because such performance (especially five- and ten-year periods) may not exist for the fund advertised, since private funds are often advertised to investors at early stages.[608] In addition, commenters stated that the performance of private equity funds can vary substantially over the term of the fund (with early years often negatively affected by organizational expenses of the ''J-curve''), and that the presentation of performance over prescribed time periods is therefore not useful to investors.[609] Similarly, commenters noted that the presentation of performance using an internal rate of return, as is typical with private equity funds, is often not meaningful in the early years of the fund because the fund is not fully invested, no investments have been harvested, and the new investments likely have not changed in value.[610]

In light of our decision not to distinguish the treatment of Retail and Non-Retail Advertisements, and after considering comments, we agree that requiring advisers to provide performance results of private funds over one-, five-, and ten-year periods in advertisements will not provide investors with useful insight into how the advertised portfolio(s) performed during different market or economic conditions. Our final rule therefore applies the time period requirement to all performance advertisements, except for performance of a private fund.[611] An adviser may rely on this exception when displaying performance advertising of *any* type of private fund, rather than only when displaying performance advertising of private equity funds or other closed-end private funds. We believe that it is appropriate to except any private fund because there may be additional types of private funds than those identified by commenters for which displaying this information could be misleading. We decline to allow only certain defined types of private funds to rely on this exception, given the varied limitations that private funds may place on redemptions now and in the future. We also do not believe the benefit of having advisers parse the rule's requirements based on specific fund types would justify the complexity. Further, although we are not mandating presentation of performance for any specific time periods for these funds, presentations of private fund performance are subject to the general anti-fraud provisions of the Federal securities laws and the general prohibitions in the final rule, including the prohibition of including or excluding performance results, or presenting performance time periods, in a manner that is not fair and balanced.[612]

Other commenters stated that our proposal would create operational difficulties for advisers that present annual returns as of the most recent calendar year-end.[613] A commenter stated that, for these advisers, the proposal's requirement to present one-, five-, and ten-year returns as of the ''most recent practicable date'' would require that they continuously update their performance presentations throughout the year.[614] This commenter requested we permit annual returns presented through the most recent calendar year-end. This commenter also requested that the final rule align with the GIPS standards by allowing advisers to present annual returns for the past ten years (or since inception if the track record exists for less than ten years) as of the most recent calendar year end, instead of one-, five-, and ten-year annualized returns.

We understand that, for some advisers, the most recent calendar year-end may be the most recent practicable date. Our final rule therefore requires that the prescribed time period end on a date that is no less recent than the most recent calendar year-end. In selecting time periods for purposes of an advertisement, an adviser may not select the periods that show only the most favorable performance—*e.g.,* presenting a five-year period ending on a particular date because that five-year period showed growth while presenting a ten-year period ending on a different date because that ten-year period showed growth. Depending on the facts and circumstances, an adviser may be required to present performance results as of a more recent date than the most recent calendar year-end to comply with the rule's general prohibitions.[615] For example, it could be misleading for an adviser to present performance returns as of the most recent calendar year-end if more timely quarter-end performance is available and events have occurred

[605] For example, an adviser may present performance results for three-year periods, which is a requirement for advisers that claim compliance with the GIPS standards. *See, e.g.,* CFA Institute Comment Letter. We are not requiring a three-year period, however, because we believe the time periods required under the final rule already provide investors with sufficient information regarding performance over varying time periods.

[606] Final rule 206(4)–1(d)(2).

[607] *See* Consumer Federation Comment Letter; CFA Institute Comment Letter; Fried Frank Comment Letter.

[608] *See* AIC Comment Letter I; Fried Frank Comment Letter; MFA/AIMA Comment Letter I; IAA Comment Letter; Ropes & Gray Comment Letter; NYC Bar Comment Letter.

[609] *See, e.g.,* AIC Comment Letter; Fried Frank Comment Letter; Ropes & Gray Comment Letter; IAA Comment Letter.

[610] *See* Fried Frank Comment Letter; MFA/AIMA Comment Letter I.

[611] Final rule 206(4)–1(d)(2). *See also* final rule 206(4)–1(e)(13) (defining private fund).

[612] *See* Fried Frank Comment Letter; Ropes & Gray Comment Letter (discussing that when not using time-based performance, there is a potential for investment advisers to cherry-pick only recent performance results or strong performance years, or otherwise mislead investors by using ''not meaningful'' to show performance information).

[613] *See* CFA Institute Comment Letter; IAA Comment Letter.

[614] CFA Institute Comment Letter. *Cf.* MMI Comment Letter (requesting that our final rule permit advisers to present quarterly performance results).

[615] *See, e.g.,* final rule 206(4)–1(a)(6) (an advertisement may not include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced).

since that time that would have a significant negative effect on the adviser's performance. If more recent quarter-end performance data is not available, the adviser should include appropriate disclosure about the performance presented in the advertisement.

We are also clarifying that, for an adviser that provides performance results in advertisements for periods other than one, five, and ten years, the adviser is free to include such results as long as the advertisement presents results for the final rule's required time periods. Thus, an adviser that complies with the GIPS standards may present annual returns for the past ten years (or since inception if the track record exists for less than ten years) as of the most recent calendar year end, in addition to performance results for the final rule's required periods.

3. Statements About Commission Approval

As proposed, the final rule prohibits any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the Commission in any advertisement containing performance results.[616] This approval prohibition is intended to prevent advisers from representing that the Commission has approved or reviewed the performance results, even when the adviser is presenting performance results in accordance with the rule. Furthermore, the final rule's general prohibitions have the effect of prohibiting an adviser from stating or implying that *any* part of an advertisement, and the advertisement as a whole, has been approved or reviewed by the Commission.[617] Our final rule prescribes this condition specifically for advertisements containing performance results because of the particular weight an investor would likely give to performance results that it believes the Commission has reviewed or vetted.

We received few comments on this aspect of the proposed rule, with one commenter supporting it and the other requesting clarification as to whether this provision would prohibit advertisements that combine performance results with summary information about an adviser's recent SEC examination.[618] We continue to believe that performance results may lead to a heightened risk of creating unrealistic expectations in an advertisement's audience. An express or implied statement that the Commission has reviewed or approved the performance results could advance such unrealistic expectations. For example, while potentially true, a statement that ''performance results are prepared in compliance with the Commission's requirements on performance presentations in advertisements'' may mislead an investor into thinking that the Commission has approved the results portrayed.[619] Such a statement could also be misleading to the extent it suggests that the Commission has reviewed or approved more generally the investment adviser, its services, its personnel, its competence or experience, or its investment strategies and methods. Therefore, under the final rule, advisers may not represent that the Commission has approved or reviewed the performance results.[620]

4. Related Performance

The final rule will condition the use of ''related performance'' in adviser advertisements, on the inclusion of all ''related portfolios.'' [621] Under the final rule, however, an adviser may exclude related portfolios if the advertised performance results are not materially higher than if all related portfolios had been included, and the exclusion does not alter the presentation of any applicable prescribed time period. The final rule defines ''related performance'' as ''the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria.'' [622] It defines ''portfolio'' as ''a group of investments managed by the investment adviser,'' and includes in the definition that ''[a] portfolio may be an account or a private fund.'' [623] It defines ''related portfolio'' as ''a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement.'' [624] The final rule's treatment of related performance, including the conditions and definitions, is largely the same as the proposal. We discuss the few differences from the proposal below.

Commenters broadly supported allowing advisers to present related performance in adviser advertisements.[625] They generally agreed that related performance can be a valuable tool to assist an investor in evaluating a particular investment adviser or investment strategy, and that its use is consistent with industry practice. A few commenters also generally supported the proposed rule's conditions for the presentation of related performance.[626] Others, however, described the proposed conditions as overly prescriptive and stated that we should address cherry-picking related portfolios solely through the rule's general prohibitions, such as the ''fair and balanced'' provision.[627] Another commenter stated that we should remove the conditions and permit advisers to identify (and document) objective criteria that they can apply on a consistent basis to exclude certain types of accounts.[628] Conversely, one commenter said we should require composite performance without *any* exclusions of related portfolios because allowing exclusions from composites would be different from the GIPS standards that require composites to include all portfolios that are managed in the composite's strategy.[629]

We continue to believe that conditioning the presentation of related performance in advertisements on the presentation of all related portfolios (with limited exceptions) is necessary to prevent investment advisers from including only related portfolios that have favorable performance results or otherwise ''cherry-picking.'' We believe our approach will provide advisers some flexibility in presenting related portfolios, without permitting exclusion because of poor performance. We believe this approach strikes the right balance between commenters that advocated for relying solely on the rule's general prohibition (and/or an adviser's own objective criteria), on the

[616] Final rule 206(4)–1(d)(3).

[617] Final rule 206(4)–1(a)(3).

[618] *See, e.g.,* Mercer Comment Letter (supporting this aspect of the proposed rule).

[619] Similarly, section 208(a) of the Act, states that it is unlawful for a registered investment adviser to represent or imply in any manner whatsoever that it has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof.

[620] *See also* section 208(a) of the Act.

[621] Final rule 206(4)–1(d)(4). The presentation must also comply with the rule's general prohibitions. *See* final rule 206(4)–1(a).

[622] Final rule 206(4)–1(e)(14).

[623] Final rule 206(4)–1(e)(11). A portfolio also includes, but is not limited to, a portfolio for the account of the investment adviser or its *advisory affiliate* (as defined in the Form ADV Glossary of Terms). *See id.*

[624] Final rule 206(4)–1(e)(15).

[625] *See, e.g.,* MFA/AIMA Comment Letter I; Proskauer Comment Letter; Comment Letter of Loan Syndications and Trading Association (Feb. 10, 2020) (''LSTA Comment Letter''); MMI Comment Letter.

[626] *See* MFA/AIMA Comment Letter I (supporting the conditions generally, but requesting that we also permit advisers to present representative accounts that would not meet the proposed rule's conditions); LSTA Comment Letter.

[627] *See* IAA Comment Letter; SIFMA AMG Comment Letter II; Ropes & Gray Comment Letter.

[628] *See* SIFMA AMG Comment Letter II.

[629] *See* CFA Institute Comment Letter.

one hand, and requiring advisers to present all related performance, on the other hand. Under the final rule, although we are permitting an adviser to exclude related portfolios subject to conditions in the final rule, an adviser may nonetheless present performance without the exclusion of any related portfolios to comply with both the GIPS standards and the final marketing rule.

In a change from the proposed rule, the final rule will allow an investment adviser to exclude from the presentation of related performance in the advertisement one or more related portfolios so long as the advertised performance results are ''not materially higher than''—rather than ''no higher than''—if all related portfolios had been included. One commenter recommended this change, stating that it will not necessarily be clear whether performance is ''no higher'' because performance results may vary based on the time period presented.[630] Another commenter cautioned that, even with such conditions, an adviser would have difficulty demonstrating compliance for each period in its track record.[631] Furthermore, this commenter stated that an adviser would incur the burden of calculating performance including all related portfolios in order to show that the performance presented was ''no higher than'' or ''not materially higher than'' if all related portfolios had been included.

We understand that an adviser will likely be required to calculate the performance of all related portfolios to ensure that the exclusion of certain portfolios from the advertisement meets the rule's conditions. Because of the special concerns that performance advertising raises, however, we believe that this burden is warranted to prevent related performance advertising from misleading investors. We believe that the modified condition we are adopting will achieve the same policy goal as our proposed rule, but give advisers additional flexibility to present related performance when there may be immaterial differences in performance results depending on the methods of calculation of returns or as between the different prescribed time periods.[632] Under the final rule, an adviser may meet this condition if the results for one prescribed time period are no higher than if all related portfolios had been included for that time period, and the results for another prescribed time period are higher, but not materially higher, than if all related portfolios had been included for that time period. It may also meet this condition if the results for any and all prescribed time periods are not materially higher than if all related portfolios had been included for each time period.

As proposed, the exclusion for related portfolios is also subject to the final rule's time period requirement for the presentation of performance in advertisements.[633] We did not receive any comments on this condition. Related performance therefore cannot exclude any related portfolio if doing so would alter the presentation of the proposed rule's prescribed time periods.

Some commenters recommended that we permit advisers to advertise one ''representative account,'' such as a flagship fund, without any prescribed conditions or in addition to providing the performance results of all related portfolios.[634] Commenters generally describe representative accounts as those that most closely resemble, or are most representative of, the advertised portfolio's specific strategy.[635] A few commenters stated that permitting representative accounts would provide flexibility to advisers that manage separate accounts and may not maintain composites that cover all portfolios managed to a specific strategy, and to smaller advisers that do not have the resources to calculate the performance of a composite that includes all those portfolios.[636] One such commenter stated that smaller advisers would therefore face challenges under the proposed rule in demonstrating that the performance of a representative account is no higher than if all related portfolios had been included.[637] Others stated that permitting representative accounts would provide investors with more pertinent information than under our proposed rule, because they believe that prospective fund investors are generally less interested in the results of the ancillary funds around that flagship fund, and could find the additional information to be confusing.[638]

We are not convinced that the benefits of an adviser presenting in an advertisement a single representative account that is not subject to prescribed conditions would justify the risks of cherry-picking related portfolios with higher-than-usual returns.[639] We also believe the materiality standard we are adopting helps to alleviate the burden on advisers to present all related performance (subject to a conditional exception). We therefore decline to make this suggested change to the rule.

An adviser, however, may present the results of a single representative account (such as a flagship fund) or a subset of related portfolios alongside the required related performance so long as the advertisement would otherwise comply with the general prohibitions.[640] In these circumstances, where the required related performance is also presented in the advertisement, we believe the concerns regarding cherry-picking a particular portfolio are mitigated. In addition, as proposed, advisers may present related performance on a portfolio-by-portfolio basis under the final rule. Advisers that manage a small number of related portfolios may find a portfolio-by-portfolio presentation to be the clearest way of demonstrating related performance in their advertisements. Presenting related performance on a portfolio-by-portfolio basis may illustrate for the audience the differences in performance achieved by the investment adviser in managing portfolios having substantially similar investment policies, objectives, and strategies. A portfolio-by-portfolio presentation also may best illustrate the differences in performance between a flagship fund and other related portfolios in some cases.

As in the proposal, presenting related performance on a portfolio-by-portfolio

[630] *See* IAA Comment Letter (''A firm may seek to exclude an account that has a superior five-year return, but a poor one-year return, or present the performance of a representative account that has a superior one-year return, but a poor five-year return. In this scenario, the advertised performance over five and ten years would be lower, but the 1-year return would be higher. This practice may be prohibited by the proposed rule because the 1-year return does not satisfy the rule's requirements, even though the longer term returns do satisfy the rule's requirements.''). *See also* CFA Institute Comment Letter (noting the same issue but making a different recommendation).

[631] *See* CFA Institute Comment Letter.

[632] We are not prescribing a specific numerical or percentage threshold for materiality or immateriality as part of this requirement. Instead, based on the facts and circumstances, if the results of excluding the related portfolio would be material to a reasonable client or investor, the portfolio should not be excluded.

[633] *See* final rule 206(4)–1(d)(4)(ii).

[634] *See, e.g.,* IAA Comment Letter; Wellington Comment Letter; MFA/AIMA Comment Letter I; CFA Institute Comment Letter.

[635] *See* Wellington Comment Letter; CFA Institute Comment Letter. *See also* MFA/AIMA Comment Letter I (discussing their view that ''investment advisers need some flexibility to recognize a 'flagship' fund for a given strategy and to treat that 'flagship' fund as the sole related portfolio in many instances.'').

[636] *See* IAA Comment Letter; CFA Institute Comment Letter.

[637] *See* IAA Comment Letter.

[638] *See* MFA/AIMA Comment Letter I; Wellington Comment Letter; SIFMA AMG Comment Letter II.

[639] Under our final rule, advisers may include performance returns of a single portfolio (without also providing the performance of other related portfolios) if the performance is not materially higher than if all related portfolios had been included, and the performance does not violate the rule's general prohibitions.

[640] *See* Wellington Comment Letter.

basis will be subject to the general prohibitions, including the prohibition on omitting material facts necessary to make the presentation, in light of the circumstances under which it was made, not misleading. For example, an advertisement presenting related performance on a portfolio-by-portfolio basis could be potentially misleading if it does not disclose the size of the portfolios and the basis on which the adviser selected the portfolios. The alternative for presenting related performance, also as proposed, is as a composite aggregation of all portfolios falling within stated criteria, which we discuss below.

a. Related Portfolio

Regarding presentations of related portfolios in advertisements, the final rule is similar to the proposal in that it does not identify or prescribe particular requirements for determining whether portfolios are ''related'' beyond whether there are ''substantially similar'' investment policies, objectives, and strategies as those of the services being offered in the advertisement. Some commenters also requested clarification that ''related portfolio'' does not include the performance results of the separately managed account or pooled investment vehicle being offered.[641] We agree that the offered portfolio is not included in the definition of ''related portfolio.''[642]

One commenter requested that we permit advisers to present performance results of a private fund both with and without the effect of any side pockets.[643] Whether a side pocket should be considered part of a portfolio or a separate portfolio and/or a related portfolio subject to the final rule's conditions for presenting related performance will be subject to the final rule's conditions for the presentation of performance and the rule's general prohibitions.[644]

A commenter also requested that we permit an adviser to exclude a separately managed account that has similar investment policies, objectives, and strategies to a private fund that the investment adviser is offering, but is customized to reflect a client's investment objectives and desired restrictions, and has fees and expenses that may not be comparable to the private fund.[645] Another commenter, however, noted that each adviser should determine for itself whether portfolios having client-specific constraints are ''substantially similar.''[646]

Whether a portfolio is a ''related portfolio'' under the rule requires a facts and circumstances analysis. An adviser may determine that a portfolio with material client constraints or other material differences, for example, does not have substantially similar investment policies, objectives, and strategies and should not be included as a related portfolio. On the other hand, different fees and expenses alone would not allow an adviser to exclude a portfolio that has a substantially similar investment policy, objective, and strategy as those of the services offered.

Two commenters also requested that the rule permit an adviser that has advised multiple private funds over time to exclude earlier private funds that the adviser determines are no longer relevant to investors, even if these funds have substantially similar investment policies, objectives, and strategies (and are therefore related portfolios).[647] They stated that the performance of prior funds may not be relevant because the successor fund is larger than previous funds and capable of different types of investments, and that there may have been changed market conditions and/or investment professional turnover. Under the final rule, if the relevant financial markets or investment advisory personnel have changed over time such that the investment policies, objectives, and strategies of an adviser's earlier private funds are no longer substantially similar to those of the fund being marketed, the adviser would not be required to include the earlier private funds in its related performance.

In a change from the proposal, the final rule refers to presentation of related performance as ''a composite aggregation''—rather than ''one or more composite aggregations''—''of all portfolios within stated criteria.''[648] An adviser may use the same criteria to construct any composites to meet the GIPS standards in order to satisfy the ''substantially similar'' requirement of the final rule's definition of ''related portfolio.''[649] However, in response to a comment from the organization that developed and administers the GIPS standards, our final rule clarifies that an adviser may only have one composite aggregation for each stated set of criteria. We agree with this commenter that the rule should not permit advisers to create more than one composite aggregation of all portfolios falling within a stated set of criteria.[650] In addition, similar to the proposal, the final rule does not prescribe specific criteria to define the relevant portfolios but requires that once the criteria are established, all related portfolios meeting the criteria are included in the composite.

As with the presentation of related performance on a portfolio-by-portfolio basis in an advertisement, any presentation as a composite is subject to the general prohibitions, including the prohibition on omitting material facts necessary to make the presentation, in light of the circumstances under which it was made, not misleading. For example, an advertisement presenting related performance in a composite would be false or misleading where the composite is represented as including all portfolios in the strategy being advertised but excludes some portfolios falling within the stated criteria or is otherwise manipulated by the adviser. We also believe that omitting the criteria the adviser used in defining the related portfolios and crafting the composite could result in an advertisement presenting related performance that is misleading.

Finally, the final rule's definition of ''portfolio'' includes a portfolio for the account of the investment adviser or its advisory affiliate. This is substantially the same as the proposed definition.[651] The only commenter that addressed this aspect of ''related performance'' generally agreed with our proposed approach.[652]

5. Extracted Performance

The final rule prohibits an adviser from presenting extracted performance in an advertisement unless the advertisement provides, or offers to provide promptly, the performance

[641] *See* SIFMA AMG Comment Letter II; AIC Comment Letter; CFA Institute Comment Letter.

[642] A portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement is a related portfolio. *See* final rule 206(4)–1(e)(15). Any performance presented in the advertisement, whether or not related, must not violate the final rule's general prohibitions, and the applicable requirements for the presentation of performance. *See* final rule 206(4)–1(a) and (d).

[643] *See* CFA Institute Comment Letter.

[644] *See* final rule 206(4)–1(a).

[645] *See* AIC Comment Letter I.

[646] *See* Consumer Federation Comment Letter.

[647] *See* AIC Comment Letter I; Ropes & Gray Comment Letter.

[648] One commenter requested that we add a definition of ''composite'' that matches a commonly accepted industry term. *See* CFA Institute Comment Letter. The final rule does not include a definition for composite, because we understand that many investment advisers already have criteria governing their creation and presentation of composites.

[649] *See* 2019 Proposing Release, *supra* footnote 7, at n.280 (discussing that, for GIPS purposes, a composite is an aggregation of portfolios managed according to a similar investment mandate, objective, or strategy).

[650] *See* CFA Institute Comment Letter.

[651] To simplify the definitions, the final rule includes this wording within the definition of ''portfolio,'' rather than within the definition of ''related portfolio,'' as proposed.

[652] *See* CFA Institute Comment Letter.

results of the total portfolio from which the performance was extracted.[653] ''Extracted performance'' means ''the performance results of a subset of investments extracted from a portfolio.'' [654] We are adopting this provision substantially as proposed, though we are requiring the adviser provide, or offer to provide, the results of the ''total portfolio,'' instead of the results of ''all investments in the portfolio,'' at the request of a commenter that recommended we clarify an adviser does not have to highlight individual positions.[655]

Commenters supported permitting extracted performance in advertisements, although they differed on what constitutes extracted performance.[656] Some commenters agreed that an adviser's extracted performance can provide useful information to investors, who often request such information to assist them in evaluating a particular investment adviser or investment strategy.[657] They noted that this is especially true for new or modified investment strategies, or new investment vehicles using a new or modified investment strategy.

However, two commenters requested clarification about the definition of extracted performance and objected to the proposed conditions.[658] One questioned whether the proposed definition includes composites of performance extracted from multiple portfolios, stating that the proposed conditions would be onerous in this case.[659] This commenter recommended eliminating the conditions and instead relying on the general prohibitions to ensure advertisements with extracted performance are fair and balanced and not misleading. The other stated that the final rule should distinguish between performance that is extracted from a single portfolio (*e.g.,* such as segment returns), and a standalone strategy presented as a composite of extracts from multiple portfolios.[660] This commenter stated that advisers typically present standalone composites and the final rule should permit them, subject to similar conditions as under the GIPS standards.[661] This commenter further agreed with the proposed requirement to provide, or offer to provide promptly, the performance results of the entire portfolio along with the extract when extracted performance is not advertised as a standalone strategy.

Like the proposed rule, our final rule's provision for extracted performance addresses the performance results of a subset of investments extracted from a single portfolio. For example, an investment adviser seeking to manage a new portfolio of only fixed-income investments may wish to advertise its performance results from managing fixed-income investments within a multi-strategy portfolio. If a prospective investor already has investments in fixed-income assets, it may want to use the extracted performance to consider the effect of an additional fixed-income investment on the prospective investor's overall portfolio. The prospective investor may also use the presentation of extracted performance from several investment advisers as a means of comparing investment advisers' management capabilities in that specific strategy.

We continue to believe that extracted performance can provide important information to investors about performance actually achieved within a portfolio. It can also provide investors with information about performance attribution within a portfolio.[662] Moreover, we expect that conditioning the presentation of extracted performance on presenting (or offering to provide promptly) the performance results of the entire portfolio from which the performance was extracted will prevent investment advisers from cherry-picking certain performance results and provide investors necessary context for evaluating the extract.[663] Requiring advisers to provide (or offer to provide promptly) this information mitigates the risk of extracted performance misleading investors. Furthermore, any differences between the performance of the entire portfolio and the extracted performance might be a basis for additional discussions between the investor and the adviser, which would assist the investor in deciding whether to hire or retain the adviser.

On the other hand, performance that is extracted from a composite from multiple portfolios is not extracted performance as defined in the final rule because it is not a subset of investments extracted from a portfolio. We believe that such a performance presentation carries a greater risk of misleading investors than an extract from a single portfolio because an adviser could cherry-pick holdings from across the composite and deem those holdings part of a particular strategy. In addition, similar to hypothetical performance, this type of composite performance presentation may not reflect the holdings of any actual investor. As a result, the final rule does not prohibit an adviser from presenting a composite of extracts in an advertisement, including composite performance that complies with the GIPS standards, but this performance information is subject to the additional protections that apply to advertisements containing hypothetical performance, as discussed below. While these additional protections may result in additional burdens for advisers that typically present extracted performance from multiple portfolios as a composite, we believe that the investor protection gained from applying the hypothetical performance restrictions to the presentation of this type of performance, which reflects a hypothetical portfolio, justifies such burden.[664]

One commenter recommended that we provide advisers with the option to either disclose assumptions underlying extracted performance, or provide them upon request, stating that detailed information about the selection criteria and assumptions used by the adviser could be overwhelming for a retail

[653] Final rule 206(4)–1(d)(5).

[654] Final rule 206(4)–1(e)(6).

[655] *See* MFA/AIMA Comment Letter II. Final rule 206(4)–1(d)(5).

[656] *See* MFA/AIMA Comment Letter I; LSTA Comment Letter; Proskauer Comment Letter; IAA Comment Letter; CFA Institute Comment Letter.

[657] *See* MFA/AIMA Comment Letter I; LSTA Comment Letter. These commenters did not object to the proposed rule's conditions for presenting extracted performance.

[658] *See* IAA Comment Letter; CFA Institute Comment Letter.

[659] *See* IAA Comment Letter (stating that advisers that present composite performance that includes extracted performance would need to present the performance of each of the total portfolios from which the carve-out segments were extracted under the proposed rule).

[660] *See* CFA Institute Comment Letter.

[661] *See* CFA Institute Comment Letter. CFA Institute agreed that for advisers presenting segment returns, or attribution, of a total portfolio, the condition to present performance of the total portfolio would be relevant.

[662] *See* CFA Institute Comment Letter (requesting guidance on whether the proposed rule's ''extracted performance'' covers attribution).

[663] This context should include any particular differences in performance results between the entire portfolio and the extract. It may include assumptions underlying the extracted performance if necessary to prevent the performance results from being misleading. We received no comments on the ''or offer to provide'' aspect of the proposal's provision to permit an adviser to *provide, or offer to promptly provide* the performance results of the entire portfolio from which the extract was extracted (italics added). Therefore, we adopted this aspect of the proposed rule.

[664] The general prohibitions also will apply to any presentation of extracted performance. For example, we view it as misleading for an adviser to present extracted performance without disclosing that it represents a subset of a portfolio's investments (an omission of a material fact). Similarly, we would view it as misleading to include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced, and able to be substantiated in accordance with the general prohibitions. In addition, an extract would likely be false or misleading where it excludes investments that fall within the represented selection criteria.

audience.[665] The final rule does not require an adviser to provide detailed information regarding the selection criteria and assumptions underlying extracted performance unless the absence of such disclosures, based on the facts and circumstances, would result in performance information that is misleading or otherwise violates one of the general prohibitions. As discussed above, an adviser should take into account the audience for the extracted performance in crafting disclosures.

Finally, as proposed, the final rule does not prescribe any particular treatment for a cash allocation with respect to extracted performance. One commenter recommended that we require such an allocation when presenting extracted performance advertised as a standalone strategy.[666] This commenter also stated that including an allocation of cash is not necessary when showing a segment of a strategy that is not used to advertise a standalone strategy. We believe that, depending on the facts and circumstances, presenting extracted performance without accounting for the allocation of cash could imply that the allocation of cash had no effect on the extracted performance and would be misleading.[667] In other cases, however, allocating cash to extracted performance may not be appropriate, such as when cash allocation decisions were made separately from the management of the extracted investments and the extracted performance is not presented as a standalone strategy. We, therefore, believe that it is appropriate to provide advisers with flexibility here since the appropriateness of allocating cash will be based on the facts and circumstances. Regardless, we would view it as misleading under the final rule to present extracted performance in an advertisement without disclosing whether it reflects an allocation of the cash held by the entire portfolio and the effect of such cash allocation, or of the absence of such an allocation, on the results portrayed.

6. Hypothetical Performance

The final rule will prohibit an adviser from providing hypothetical performance in an advertisement, unless the adviser takes certain steps to address its potentially misleading nature. Largely as proposed, the final rule will condition the presentation of hypothetical performance in advertisements on the adviser adopting policies and procedures reasonably designed to ensure that the hypothetical performance information is relevant to the likely financial situation and investment objectives of the advertisement's intended audience. We intend for advertisements including hypothetical performance information to only be distributed to investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations (referred to herein collectively as ''investors who have the resources and financial expertise'').[668] An adviser also must provide additional information about the hypothetical performance that is tailored to the audience receiving the advertisement, such that the intended audience has sufficient information to understand the criteria, assumptions, risks, and limitations.

While commenters requested additional flexibility with regard to some of the conditions, they generally supported our proposed treatment of hypothetical performance.[669] However, one commenter stated that we should not allow the presentation of hypothetical performance in advertisements.[670]

We are adopting the hypothetical performance provisions of the rule largely as proposed because we believe that such presentations in advertisements pose a high risk of misleading investors since, in many cases, they may be readily optimized through hindsight. Moreover, the absence of an actual investor or, in some cases, actual money underlying hypothetical performance raises the risk of a misleading advertisement, because such performance does not reflect actual losses or other real-world consequences if an adviser makes a bad investment or takes on excessive risk. However, we understand that other information that may demonstrate the adviser's investment process as well as hypothetical performance may be useful to prospective investors who have the resources and financial expertise. When subjected to this analysis, the information may allow an investor to evaluate an adviser's investment process over a wide range of periods and market environments or form reasonable expectations about how the investment process might perform under different conditions. We believe the three conditions discussed below, as well as our changes to the definition of ''hypothetical performance,'' will make it more likely that the dissemination of advertisements containing hypothetical performance information will be limited to investors who have the resources and financial expertise to appropriately consider such information.

Certain commenters suggested that we only allow advisers to present hypothetical performance to Non-Retail Persons,[671] while others advocated for a more nuanced approach (rather than categorical exclusions) that would allow the dissemination of hypothetical performance based on facts and circumstances.[672] As noted above, the final rule will not include different provisions for Retail and Non-Retail Persons and we believe that the rule is sufficiently flexible to facilitate the application of the hypothetical performance conditions based on facts and circumstances.

Like the proposed rule, the final rule applies to communications containing hypothetical performance that otherwise fall within the definition of ''advertisement'' because we believe that there is a significant risk that such performance could mislead investors.[673] Some commenters stated that we should not impose the hypothetical performance conditions to one-on-one communications as such an approach would inhibit communications between an adviser and prospective or current investors.[674] As discussed above, communications are excluded from the

[665] *See* CFA Institute Comment Letter (discussing presentations of performance for standalone strategies).

[666] *See* CFA Institute Comment Letter.

[667] For example, it would be misleading to present extracted performance without allocating cash when the allocation of cash was part of the portfolio management for the subset of investments extracted from a portfolio, and such allocation would have materially reduced the extracted performance returns.

[668] We would not view the mere fact that an investor would be interested in high returns as satisfying the requirement that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience.

[669] *See, e.g.,* Wellington Comment Letter; Comment Letter of Withers Bergman LLP (Feb. 10, 2020) (''Withers Bergman Comment Letter''); MMI Comment Letter; NAPFA Comment Letter.

[670] *See* Mercer Comment Letter (stating that the restrictions imposed on hypothetical performance by the proposed general prohibitions would not be sufficient to prevent advisers from displaying hypothetical performance in a materially misleading manner).

[671] *See, e.g.,* NASAA Comment Letter; Prof. Jacobson Comment Letter; Mercer Comment Letter.

[672] *See, e.g.,* MFA/AIMA Comment Letter I.

[673] *See* proposed rule 206(4)–1(e)(1). The proposed rule included one-on-one communications in the definition of advertisement. While the proposed rule excluded responses to unsolicited requests from the definition of advertisement, the exclusion did not cover hypothetical performance even if such performance was included in a one-on-one communication. As a result, under our proposed rule, hypothetical performance would have been subject to the specific conditions of the proposed rule (subsection (c)).

[674] *See, e.g.,* MFA/AIMA Comment Letter I; IAA Comment Letter.

scope of the final rule as long as they are provided in response to unsolicited investor requests; provided to a private fund investor in a one-on-one communication; or occur extemporaneously, live, and orally.[675]

While the final rule allows advisers to provide certain performance presentations in advertisements that would otherwise be considered hypothetical performance (*i.e.,* interactive tools and educational materials), we believe there are adequate protections to address this risk in part because the anti-fraud provisions of the Advisers Act would apply.[676]

We also made the following changes to the treatment of hypothetical performance advertising under the rule in response to commenters' concerns: (1) Added more flexibility to the policies and procedures requirement of the final rule to allow advisers to consider the *likely* financial situation and investment objectives of the *intended audience;* (2) added more flexibility to allow advisers to consider each of the three hypothetical performance conditions with respect to the *intended audience* of the advertisement (as opposed to the specific person receiving the advertisement containing hypothetical performance information); (3) broadened the requirement for advisers to provide sufficient information to *all* investors (and not only Retail Persons) to enable them to understand the risks and limitations of using hypothetical performance advertising, except for private fund investors; and (4) revised the definition of hypothetical performance by: (a) Broadening the types of model portfolios whose performance is considered hypothetical performance; (b) excluding the performance of proprietary portfolios and seed capital portfolios; (c) including data from prior periods (and not just ''market data'' as proposed) for certain backtested performance; and (d) excluding interactive analysis tools and predecessor performance. The final rule also makes clear that an adviser need not comply with certain conditions on the presentation of performance in advertisements, namely the requirements to present specific time periods, and the particular conditions applicable to presenting related or extracted performance.[677]

a. Types of Hypothetical Performance

The final rule defines ''hypothetical performance'' as ''performance results that were not actually achieved by any portfolio of the investment adviser'' and explicitly includes, but is not limited to, model performance, backtested performance, and targeted or projected performance returns.[678] The proposed definition of hypothetical performance would have included ''performance results that were not actually achieved by any portfolio *of any client* of the investment adviser'' (emphasis added).[679] In response to one commenter's concerns,[680] we removed the ''of any client'' qualifier in order to clarify that the actual performance of the adviser's proprietary portfolios and seed capital portfolios is not hypothetical performance. However, advisers should not invest a nominal amount of assets in a portfolio in an effort to avoid the ''hypothetical performance'' designation. Instead, to show that the results are those of an actual portfolio, an adviser must invest an amount of seed capital that is sufficient to demonstrate that the adviser is not attempting to do indirectly what it is prohibited from doing directly,[681] or otherwise be able to demonstrate that the strategy is reasonably intended to be offered to investors.

In a change from the proposal, we also narrowed the definition of hypothetical performance under the rule to exclude interactive analysis tools and predecessor performance. While we proposed to exclude certain financial tools from the hypothetical performance provisions, below we clarify the treatment of such tools in response to commenters' concerns. We excluded predecessor performance because we are adopting specific rule text on the presentation of predecessor performance.

We discuss each type of hypothetical performance in the following sections.

*Model Performance.* The proposal referred to, but did not define, ''representative performance'' and discussed model performance as a type of representative performance.[682] In response to commenters' concerns,[683] we are no longer using the term ''representative performance'' and are treating all ''model performance'' as hypothetical performance.[684] We did not intend to limit the definition of hypothetical performance to only performance generated by the models described in the Clover no-action letter. Rather, we proposed this definition to make clear that the rule would apply in the context of a common industry practice that has evolved around prior staff letters.[685] But, as one commenter noted, the discussion of model portfolios in staff letters reflects only the specific circumstances of the adviser seeking a staff letter, and advisers currently employ model portfolios in a variety of circumstances.[686] Instead of limiting the discussion of model portfolios to those managed *alongside* portfolios managed for actual investors,[687] the final rule will broaden the definition. Model performance will include, but not be limited to, performance generated by the following types of models: (i) Those described in the Clover no-action letter where the adviser applies the same investment strategy to actual investor accounts, but where the adviser makes slight adjustments to the model (*e.g.,* allocation and weighting) to accommodate different investor investment objectives; (ii) computer generated models; and (iii) those the adviser creates or purchases from model providers that are not used for actual investors. After considering comments, we believe it is appropriate for the final rule to accommodate the use of these variations while ensuring that advisers consider whether this information is relevant to the intended audience.[688]

[675] *See* final rule 206(4)–1(e)(1)(i)(A) and (C). The conditions also will not apply if hypothetical performance is included in a regulatory notice. Final rule 206(4)–1(e)(1)(i)(B).

[676] In connection with the marketing of private funds, the anti-fraud provisions of the Securities Act and Exchange Act would also apply.

[677] *See* final rule 206(4)–1(d)(6)(iii).

[678] Final rule 206(4)–1(e)(8).

[679] *See* proposed rule 206(4)–1(e)(5).

[680] *See, e.g.,* CFA Institute Comment Letter.

[681] *See* section 208(d) of the Act.

[682] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.5 (describing representative performance as *including* performance generated by models that adhered to the same investment strategy as that used by the adviser for actual clients).

[683] *See, e.g.,* CFA Institute Comment Letter; IAA Comment Letter.

[684] *See* final rule 206(4)–1(e)(8)(i). Model performance would include, among other things, the type of ''model performance'' described in the Clover Letter: Performance results generated by a ''model'' portfolio managed with the same investment philosophy used by the adviser for actual client accounts and ''consist[ing] of the same securities'' recommended by the adviser to its clients during the same time period, ''with variances in specific client objectives being addressed via the asset allocation process (*i.e.,* the relative weighting of stocks, bonds, and cash equivalents in each account).'' *See* Clover Letter. The rule will treat this as hypothetical performance because, although the ''model'' consists of the same securities held by several portfolios, the asset allocation process would result in performance results that were not actually achieved by any portfolio.

[685] *See* Clover Letter.

[686] *See* SIFMA AMG Comment Letter II; IAA Comment Letter (discussing ''other types of 'model' performance that do not reflect investment advice actually provided to clients'').

[687] *See* proposed rule 206(4)–1(e)(5).

[688] *See, e.g.,* SIFMA AMG Comment Letter II (suggesting that the Commission recognize that model portfolios are not limited to the type

Continued

One commenter supported treating model performance as hypothetical performance,[689] while some commenters objected because model performance could reflect the actual performance of a strategy that is managed in real time.[690] We understand that model portfolios can be (but are not always) managed alongside portfolios with investor or adviser assets and that many investors find model performance helpful. For instance, model performance may present a nuanced view of how an adviser would construct a portfolio without the impact of certain factors, such as the timing of cash flows or investor-specific restrictions, which may not be relevant to the particular investor. Model performance also can help an investor assess the adviser's investment style for new strategies that have not yet been widely adopted (or adopted at all) by the adviser's investors.

However, we believe that model performance is appropriately treated as hypothetical performance because such performance was not achieved by the actual performance of a portfolio and could mislead investors. For example, advances in computer technologies have enabled an adviser to generate hundreds or thousands of potential model portfolios in addition to the ones it actually offers or manages. An adviser that generates a large number of model portfolios has an incentive to advertise only the results of the highest performing models and ignore others. The adviser could run numerous variations of its investment strategy, select the most attractive results, and then present those results as evidence of how well the strategy would have performed under prior market conditions. Even in cases where an adviser generates only a single model portfolio, neither investor nor sufficient adviser assets are at risk, so the adviser can manage that portfolio in a significantly different manner than if such risk existed. For these reasons, we believe it is more likely for an investor to be misled where the investor does not have the resources to scrutinize such performance and the underlying assumptions used to generate model portfolio performance. We believe treating model performance as hypothetical performance under the rule guards against the investor protection concerns addressed above.

Some commenters suggested that we consider more flexible treatment of model performance given that performance generated by certain types of model portfolios would be less likely to mislead investors.[691] We believe that the conditions described below are sufficiently flexible to allow advisers to tailor their approach based on the intended audience of the advertisement *and* the type of hypothetical performance, including performance generated for different types of model portfolios. For example, if an adviser believes that model performance is less likely to mislead the intended audience, the adviser may decide that less-stringent policies and procedures are required under the first condition, and that the required disclosures may differ and be more limited than those required for backtested performance. In contrast, if an adviser believes that model performance is highly likely to mislead a particular audience (*e.g.,* it is difficult to provide disclosure that is sufficiently specific but also understandable), the adviser could adopt policies and procedures that eliminate the presentation of that type of model performance to this investor type in its advertisements or modify the presentation to satisfy the requirements of the final rule. An adviser would need to consider the intended audience of the advertisement and the type of hypothetical performance in order to satisfy the conditions.

Commenters suggested that we consider the impact of this characterization of hypothetical performance on model providers to wrap fee accounts and advisers that provide models to other, end-user advisers for implementation.[692] We understand that model providers may not have access to the actual performance data generated after the end-user adviser implements the model and that the performance data they have access to may reflect another adviser's fees or adjustments. Even if model providers had access to such actual performance data, we believe they would still be subject to the hypothetical performance provisions because the performance generated would be the performance of a portfolio managed by the end-user adviser, not the model provider. However, we believe that model providers would not have difficulty satisfying the three hypothetical performance provisions. For example, we anticipate the intended audience for model provider advertisements often will be end-user advisers or wrap fee program sponsors. Model providers therefore could adopt simple policies and procedures because the model provider reasonably believes that the intended audience is sophisticated and should have the analytical resources and tools necessary to interpret this type of hypothetical performance. The model provider could similarly satisfy the rule's disclosure requirements for hypothetical performance based on the end-user's profile since the model providers would know that the end-user adviser is a well-informed investor with analytical tools at his/her disposal.

*Backtested Performance.* As proposed, the final rule will treat backtested performance as a type of hypothetical performance. We proposed to include ''[p]erformance that is backtested by the application of a strategy to market data from prior periods when the strategy was not actually used during those periods.''[693]

One commenter supported broadening the types of backtested performance that would be subject to the hypothetical performance provisions.[694] Other commenters said that we should not treat backtested performance as a type of hypothetical performance.[695]

We acknowledge that backtested performance may help investors understand how an investment strategy may have performed in the past if the strategy had existed or had been applied at that time. In addition, this type of

discussed in the Clover Letter); IAA Comment Letter.

[689] *See* CFA Institute Comment Letter (stating that ''paper portfolios'' should be treated as hypothetical performance).

[690] *See, e.g.,* SIFMA AMG Comment Letter II; MMI Comment Letter.

[691] *See, e.g.,* NYC Bar Comment Letter; NRS Comment Letter; MFA/AIMA Comment Letter I (stating that ''the Commission should modify the Proposed Advertising Rule to allow investment advisers to scale the scope of disclosures to the risk profile of the type of 'hypothetical performance' information.'').

[692] *See, e.g.,* SIFMA AMG Comment Letter II; MMI Comment Letter (stating that model performance is not hypothetical because it ''reflects actual performance of an investment strategy in real-time''); IAA Comment Letter (stating that ''[m]any advisers serve as model providers to wrap accounts and other advisers. Such model providers would not necessarily have the data on the actual performance of the accounts managed to their models, as they are not acting directly as advisers to the underlying accounts.''); NYC Bar Comment Letter.

[693] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.5.c.iv.

[694] *See* CFA Institute Comment Letter (stating that proposed definition of backtested performance would not include ''strategies that take data from other portfolios managed by the Adviser or someone else and backtest an asset allocation strategy.'').

[695] *See, e.g.,* NYC Bar Comment Letter (stating ''backtested returns are a conditional analysis of prior data'' and advisers use this information to stress test investment methodologies that the advisers intend to use in the future); MMI Comment Letter (stating ''backtested performance figures are not purely hypothetical, but rather reflect an analysis of actual investment performance based on certain assumptions'' and that such illustrations ''analyze historical data'').

performance information may demonstrate how the adviser adjusted its model to reflect new or changed data sources. While we understand the potential value of such data to investors, backtested performance information also has the potential to mislead investors. Because this performance is calculated after the end of the relevant period, it allows an adviser to claim credit for investment decisions that may have been optimized through hindsight, rather than on a forward-looking application of stated investment methods or criteria and with investment decisions made in real time and with actual financial risk. For example, an investment adviser is able to modify its investment strategy or choice of parameters and assumptions until it can generate attractive results and then present those as evidence of how its strategy would have performed in the past.[696]

We believe that backtested performance included in an advertisement is more likely to be misleading to the extent that the intended audience does not have the resources and financial expertise to assess the hypothetical performance presentation. The conditions that the final rule will impose on displays of hypothetical performance in advertisements are designed to ensure that advisers present backtested performance in a manner that is appropriate for the advertisement's intended audience.

In response to a commenter's suggestion,[697] the final rule will apply to advertisements including presentations of performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods, instead of applying only to application of the strategy to ''market'' data from a prior time period. Accordingly, the hypothetical performance provisions will apply to presentations of both market and non-market data in advertisements. This change will account for scenarios where an adviser could backtest performance based on non-market data (*e.g.,* data from other portfolios managed by the adviser). We are otherwise adopting this provision as proposed.

Another commenter asked that we address which disclosures must accompany specific displays of backtested performance.[698] In the spirit of our principles-based approach, we decline to prescribe the exact disclosure language that should accompany displays of backtested performance in advertisements.

*Targets and Projections.* As proposed, the final rule will treat presentations of targeted and projected returns in advertisements as presentations of hypothetical performance. Targeted returns reflect an investment adviser's aspirational performance goals. Projected returns reflect an investment adviser's performance estimate, which is often based on historical data and assumptions. Projected returns are commonly established through mathematical modeling.[699]

Most commenters that addressed this topic opposed the characterization of targeted returns as hypothetical performance on the grounds that targeted returns indicate expectations about how a product or strategy is intended to perform (*e.g.,* how aggressively a strategy will be managed) as opposed to predictions of performance.[700] Several of these commenters agreed that the Commission should continue to treat projected returns as hypothetical performance.[701]

Targets and projections could potentially be presented in such a manner to raise unrealistic expectations of an advertisement's audience and thus be misleading, particularly if they use assumptions that are not reasonably achievable. For example, an advertisement may present unwarranted claims based on assumptions that are virtually impossible to occur, such as an assumption that three or four specific industries will experience decades of uninterrupted growth.

We recognize, however, that there are some differences between targeted and projected returns. Targeted returns are aspirational and may be used as a benchmark or to describe an investment strategy or objective to measure the success of the strategy.[702] Projected returns, on the other hand, use historical data and assumptions to predict a likely return.[703] Therefore, targeted returns may not involve all (or any) of the assumptions and criteria applied to generate a projection. Still, we do not believe that the difference between targeted and projected returns is always readily apparent to recipients of an advertisement. We believe that the presentation of targeted returns in such context could result in unrealistic expectations. We continue to believe, therefore, that the presentation of targets and projections in advertisements should be subject to the rule's hypothetical performance conditions. The conditions we are adopting with respect to the use of hypothetical performance are principles-based, allowing the adviser to tailor the disclosure to the type of performance used in the advertisement. For example, in the case of an advertisement that presents targeted returns, which are generally aspirational in nature and not necessarily based on ''criteria and assumptions,'' to meet this disclosure requirement an adviser's disclosure could state that criteria and assumptions were not used.

We believe that providing hypothetical performance in advertisements only to those investors with the resources and financial expertise to assess targets or projections will help avoid scenarios where an investor might be misled into thinking that such performance is guaranteed. We recognize that some investors want to consider targeted returns and projected returns (along with these underlying assumptions) when evaluating investment products, strategies, and services. For example, based on our staff's outreach and experience, we understand that financially sophisticated investors in particular may have specific return targets that they seek to achieve, and their planning processes may necessarily include reviewing and analyzing the targets advertised by investment advisers and the information

[696] *See, e.g.,* David H. Bailey, Jonathan M. Borwein, Marcos López de Prado, and Qiji Jim Zhu, *Pseudo-Mathematics and Financial Charlatanism: The Effects of Backtest Overfitting on Out-of-Sample Performance,* 61(5) Notices of the Am. Mathematical Society, 458, 466 (May 2014), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2308659* (describing the potential to overfit an investment strategy so that it performs well in-sample (the simulation over the sample used in the design of the strategy) but performs poorly out-of-sample (the simulation over a sample not used in the design of the strategy)).

[697] *See* CFA Institute Comment Letter.

[698] *See* NRS Comment Letter.

[699] The final rule does not define ''targeted return'' or ''projected return.'' We believe that these terms have commonly understood meanings, and we do not intend to narrow or expand inadvertently the wide variety of returns that may be considered targets or projections. We generally would consider a target or projection to be any type of performance that an advertisement presents as results that could be achieved, are likely to be achieved, or may be achieved in the future by the investment adviser with respect to an investor.

[700] *See, e.g.,* Wellington Comment Letter (agreeing that projected returns have a heightened ability to mislead investors, but stating that targeted returns can provide useful information about the risk profile of an investment strategy); Fidelity Comment Letter; MMI Comment Letter (stating that targeted returns ''are performance goals that an adviser seeks to achieve with a particular strategy or product'' while hypothetical returns ''represent a projection of what returns will or could be based on a series of assumptions'').

[701] *See, e.g.,* CFA Institute Comment Letter; AIC Comment Letter.

[702] *See, e.g.,* CFA Institute Comment Letter.

[703] *Id.*

underlying those targets. Specifically, an analysis of these targets or projections can inform an investor about an adviser's risk tolerance when managing a particular strategy. We understand that information about an adviser's targets or projections also can be useful to an investor when assessing how the adviser's strategy fits within the investor's overall portfolio, but advisers must consider the intended audience when making such presentations in advertisements.

The rule will apply only to targeted or projected performance returns ''with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement.'' [704] This means that projections of general market performance or economic conditions in an advertisement are not targeted or projected performance returns subject to the provision on presentation of hypothetical performance.

We did not propose to exclude from the definition of ''hypothetical performance'' the performance generated by interactive analysis tools. However, in the proposal, we noted that FINRA permits investment analysis tools as a limited exception from FINRA's general prohibition of projections of performance, subject to certain conditions and disclosures, and we requested comment on whether we should consider FINRA's approach.[705] Commenters generally supported an exclusion for such tools and for adopting FINRA's approach.[706]

As a result, the final rule will exclude the performance generated by investment analysis tools from the definition of hypothetical performance and will import a definition of ''investment analysis tool'' from FINRA Rule 2214 with slight modifications.[707] FINRA Rule 2214 defines an ''investment analysis tool'' as ''an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.'' We will adopt this definition, but will require that a current or prospective investor must use the tool (*i.e.,* input information into the tool or provide information to the adviser to input into the tool).

Despite the fact that an investment analysis tool is often a computer-generated model that does not reflect the results of an actual account, the rule will allow an adviser to present these tools in advertisements without complying with the conditions applicable to hypothetical performance.[708] We do not view these tools as presenting the same investor risks that model portfolios do because they typically present information about various investment outcomes based on the investor's situation and require the investor to interface directly with the tool. In providing an interactive analysis tool, an adviser should consider which disclosures are necessary in order to comply with the general prohibitions of the final marketing rule. For example, to comply with the first general prohibition, the adviser should neither imply nor state that the interactive tool, alone, can determine which securities to buy or sell.

The final rule will allow advisers to use interactive analysis tools, provided that the investment adviser: (1) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions; (2) explains that the results may vary with each use and over time; (3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and (4) discloses that the tool generates outcomes that are hypothetical in nature.[709] The fact that an interactive tool uses the same underlying assumptions does not mean that outputs the tool generates are advertisements (because the adviser or investor inputs investor-specific information). We believe that there are adequate investor protection guardrails in place to allow advisers to provide interactive analysis tools.[710]

Commenters suggested that we clarify the treatment of broad market or index-based performance data.[711] We agree that the use of index-based data can be informative to investors as a benchmarking tool.[712] For example, in a scenario where an actual portfolio tracks an index, information regarding the index's performance can provide useful information regarding tracking error, sector allocation, and performance attribution. Accordingly, we believe that an index used as a performance benchmark in an advertisement would not be hypothetical performance, unless it is presented as performance that could be achieved by a portfolio.[713]

[704] Final rule 206(4)–1(e)(8)(iii).

[705] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.5.c.iv.

[706] *See, e.g.,* SIFMA AMG Comment Letter II (stating that ''[i]n the retail setting it is common to use projections that are based on statistically valid methodologies (*e.g.,* Monte Carlo simulations) to assist clients and investors in understanding whether the investment of their current assets will allow them to meet future goals''); BlackRock Comment Letter (stating that the rule should provide a safe harbor from the hypothetical performance provisions for investment analysis tools that comply with FINRA rule 2214); IAA Comment Letter; T. Rowe Price Comment Letter.

[707] FINRA rule 2214 provides a limited exception from FINRA rule 2210's prohibition on communications that predict or project performance. While FINRA rule 2210 applies differently to communications directed to retail versus institutional investors, our final rule does not have such a bifurcated approach.

[708] Under the final rule, general educational communications that rely on public information and do not reference specific advisory products or services offered by the adviser would not qualify as advertisements. *See supra* section II.A.2.a.v. Educational presentations of performance that reflect an allocation of assets by type or class, which we understand investment advisers may use to inform investors and to educate them about historical trends regarding asset classes would not be treated as advertisements and would not be subject to the rule's conditions on the use of hypothetical performance. For example, the following would not be considered hypothetical performance under the final rule: A presentation of performance that illustrates how a portfolio allocated 60% to equities and 40% to bonds would have performed over the past 50 years as compared to a portfolio composed of 40% equities and 60% bonds. Our approach regarding educational presentations of performance would apply even if the investment adviser used one of the allocations in managing a strategy being advertised or illustrated such allocations by reference to relevant indices or other benchmarks.

[709] *See* final rule 206(4)–1(e)(8)(iv)(A)(*4*). Such disclosure could state, for example: ''IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.''

[710] *See* section 206 of the Advisers Act. *See also* section 17(a) of the Securities Act, section 10(b) of the Exchange Act (and rule 10b–5 thereunder), and rule 206(4)–8 under the Advisers Act.

[711] *See* IAA Comment Letter; CFA Institute Comment Letter (stating that ''indexes created by the Adviser should be considered hypothetical performance when the Adviser backtests the index to see how it would have performed. Other than this case, we do not believe that benchmarks should be considered hypothetical performance.'').

[712] *See e.g.,* IAA Comment Letter; CFA Institute Comment Letter.

[713] *See* final rule 206(4)–1(e)(8) (defining ''hypothetical performance'' as ''performance results that were not actually achieved by any *portfolio* of the investment adviser''). Although we would not expect an adviser to comply with the conditions applicable to hypothetical performance, we *would* expect the adviser to comply with the general prohibitions, for instance, by disclosing that the volatility of the index is materially different from that of the model or actual performance results with which the index is compared. Most of the other provisions of the rule would be irrelevant. For instance, although the conditions on the presentation of performance would apply, the requirement to show net performance would be

b. Conditions on Presentation of Hypothetical Performance

Largely as proposed, the final rule will prohibit the presentation of hypothetical performance in advertisements except under certain conditions designed to address the potential for hypothetical performance to mislead investors. First, the adviser must adopt and implement policies and procedures reasonably designed to ensure that the hypothetical performance information is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement. Second, the adviser must provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance (the ''criteria and assumptions''). Third, the adviser must provide (or, if the intended audience is a private fund investor, provide, or offer to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using hypothetical performance in making investment decisions (the ''risk information'').[714] For purposes of this discussion, we refer to the criteria and assumptions and the risk information collectively as the ''underlying information.'' Finally, the final rule does not require an investment adviser to comply with several conditions applicable to the presentation of performance information in advertisements, specifically the requirement to present specific time periods, and the requirements related to the presentation of related performance, and extracted performance.[715]

*Policies and Procedures.* In a modification from the proposal, under the first condition for displaying hypothetical performance information in advertisements, advisers must adopt and implement policies and procedures ''reasonably designed to ensure that the hypothetical performance is relevant to the *likely* financial situation and investment objectives'' of the *intended audience.*[716] The proposed condition would have required a higher degree of certainty of the financial situation and investment objectives of the person to whom the advertisement is disseminated. Under the final rule, reasonably designed policies and procedures need not address each recipient's particular circumstances; rather, the adviser must make a reasonable judgement about the likely investment objectives and financial situation of the advertisement's intended audience.

The final rule will not prescribe the ways in which an adviser may seek to satisfy the policies and procedures requirement, including how the adviser will establish that the policies and procedures are reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience. We have previously used policies and procedures to establish a defined audience.[717] We believe that this approach will provide investment advisers with the flexibility to develop policies and procedures that best suit their investor base and operations.

While one commenter supported the proposed condition,[718] several commenters suggested that we eliminate it because it is too subjective and difficult to implement.[719] One commenter suggested that the condition not apply to institutional investors,[720] while another commenter stated that the condition imposes a standard so high that an adviser could not satisfy the standard for retail investors.[721] Another commenter suggested that we clarify that the proposed condition would not require an adviser to have knowledge of the specific individual circumstances or financial condition of *each* investor receiving hypothetical performance from the adviser.[722]

We continue to believe that this condition, as modified, will ensure that advisers provide advertisements containing relevant hypothetical performance to the appropriate audience without creating unnecessary compliance burdens. In response to commenters' concerns, however, the final rule will specify that the policies and procedures must be reasonably designed to ensure that hypothetical performance is relevant to the *likely* financial situation and investment objectives of the *intended audience.* We added the qualifier ''likely'' to clarify that an adviser is not required to know the actual financial situation or investment objectives of each investor that receives hypothetical performance. We also replaced the word ''person'' with ''intended audience'' to clarify that advisers can comply with this condition, as well as the other conditions related to hypothetical performance, by grouping investors into categories or types, and to emphasize that an investor might not be a natural person. We believe that these changes will ease the compliance burdens commenters identified.

This condition is designed to help ensure that an adviser provides advertisements containing hypothetical performance information only to those investors with the resources and financial expertise. Hypothetical performance may not be relevant to the likely financial situation and investment objectives of and may be misleading for investors that do not have the resources and financial expertise. For example, analysis of hypothetical performance may require tools and/or other data to assess the impact of assumptions driving hypothetical performance, such as factor or other performance attribution, fee compounding, or the probability of various outcomes. Without being able to subject hypothetical performance to additional analysis, this information could tell an investor little about an investment adviser's process or other information relevant to a decision to hire the adviser. Instead, providing hypothetical performance to an investor that does not have access to the resources and financial expertise needed to assess the hypothetical performance and underlying information could mislead the investor to believe something about the adviser's experience or ability that is unwarranted. We believe that advisers generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation. In that case, because the advertisement would be available to mass audiences, an adviser generally could not form any expectations about

inapplicable because there are no fees or expenses to deduct from an index. Index information that is provided for general educational purposes and not, for instance, as a comparison to the adviser's performance presentation, would not be considered an advertisement. *See supra* section II.A.2.a.v.

[714] *See* final rule 206(4)–1(d)(6)(iii).

[715] *See id.*

[716] Final rule 206(4)–1(d)(6)(i).

[717] We have defined ''retail money market fund'' to mean ''a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.'' *See* 17 CFR 270.2a–7(a)(21); *see also Money Market Fund Reform; Amendments to Form PF,* Release No. IA–3879 (July 23, 2014) [79 FR 47736 (Aug. 14, 2014)], at nn.715–716 and accompanying text.

[718] *See* Consumer Federation Comment Letter.

[719] *See, e.g.,* MMI Comment Letter (stating this condition would be difficult, if not impossible, to satisfy for an advertisement that would be disseminated to a large number of people); SIFMA AMG Comment Letter II; Wellington Comment Letter.

[720] *See* Credit Suisse Comment Letter.

[721] *See* CFA Institute Comment Letter.

[722] *See* Comment Letter of Flexible Plan Investments, Ltd. on proposed advertising rule (Feb. 10, 2020) (''Flexible Plan Investments Comment Letter II'') (noting that the relevancy requirement would be difficult to administer because ''[i]t will be dependent on knowing in many cases the exact person to whom the use of (sic) hypothetical performance is being delivered.'').

their financial situation or investment objectives.

The adviser's past experiences with particular types of investors should lead the adviser to design reasonable policies and procedures that distinguish among investor types and whether hypothetical performance is relevant to the likely financial situation and investment objectives of an audience composed of that type. Such policies and procedures could distinguish investor types on the basis of criteria, such as previous investments with the adviser, net worth or investing experience if that information is available to the adviser, certain regulatory defined categories (*e.g.,* qualified purchasers or qualified clients), or whether the intended audience includes only natural persons or only institutions.

An adviser could determine that certain hypothetical performance presentations are relevant to the likely financial situation and investment objectives of certain types of investors based on routine requests from those types of investors in the past. For example, an adviser, based on its past experience, might be able to reasonably conclude that hypothetical performance would be relevant to investors who meet certain financial sophistication standards such as qualified client [723] or qualified purchaser.[724] The adviser could explain in its policies and procedures why it believes that hypothetical performance is relevant for this intended audience. In addition, an adviser's policies and procedures should address how the adviser's dissemination of the advertisement would seek to be limited to that audience. As discussed above, hypothetical performance directed to mass audiences generally will not be able to meet this standard.

One commenter expressed concerns that this condition would pose a compliance challenge for advisers to private funds because they do not have insight into potential investors, especially prior to the time when subscription documents are disseminated.[725] Because an adviser's policies and procedures should be informed by its prior experience with certain investor types, an adviser that plans to advise a private fund can develop policies and procedures that take into account its experience advising a prior private fund for which it raised money from investors. That experience might indicate that investors in the vehicle valued a particular type of hypothetical performance because, for example, the investors used it to assess the adviser's strategy and investment process. Similarly, an adviser could determine, based on its experience, that hypothetical performance is not relevant to the likely financial situation and investment objectives of certain investors and reflect such determination in its policies and procedures. New advisers that do not have prior client experiences to inform their determination of the intended audience can rely on other resources, including information they have gathered from potential investors (*e.g.,* questionnaires, surveys, or conversations) and academic research, to help identify the intended audience in connection with the three hypothetical performance conditions.[726]

One commenter expressed concern that this condition would effectively restrict hypothetical performance only to a sub-set of investors with the financial and analytical resources to analyze such performance even if an investor outside of this sub-set specifically requested the information.[727] As noted above, we believe that it is appropriate to apply the hypothetical performance conditions to communications that otherwise meet the definition of advertisement, even if they take place in one-on-one settings due to the potential for such information to mislead investors. However, advisers would still be able to provide investors with interactive financial analysis tools without subjecting those tools to the hypothetical performance conditions.

*Criteria and Assumptions.* The second condition for the presentation of hypothetical performance will require the adviser to provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the hypothetical performance.[728] The rule does not prescribe any particular methodology or calculation for the different categories of hypothetical performance, just as it does not prescribe methodologies or calculations for actual performance. Instead, advisers must provide the information about criteria and assumptions so that the intended audience can understand how the hypothetical performance was calculated. We are adopting the second condition largely as proposed, except that we are replacing the phrase ''such person'' with ''the intended audience'' for consistency with the first condition, as discussed above. In addition, and in response to one commenter's concerns,[729] we are clarifying that the adviser is responsible for providing sufficient information as we agree that it would not be workable to require advisers to have a precise understanding of exactly what each investor needs in order to allow that investor to understand the calculations and assumptions underlying the hypothetical performance.[730]

Several commenters expressed concern that this condition would require advisers to disclose proprietary or confidential information [731] due to the statement in the proposal that this condition may require advisers to provide the ''methodology used in calculating and generating the hypothetical performance.'' [732] To clarify, we do not expect advisers to disclose proprietary or confidential information to satisfy this condition. We expect that a general description of the methodology used would be sufficient information for an investor to understand how it was generated.

Under the final rule, the condition will not require an adviser to provide information that would be necessary to allow the intended audience to replicate the performance (*e.g.,* information that is confidential or proprietary). With

[723] *See* rule 205–3(d)(1) under the Act.

[724] *See* section 2(a)(51) of the Investment Company Act.

[725] *See* Ropes & Gray Comment Letter.

[726] Advisers may already be required to comply with similar provisions under other regulatory regimes that also require advisers to consider the recipient when disseminating communications. *See, e.g.,* FINRA rule 2210(d)(1)(E) (''Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.''); Global Investment Performance Standards (GIPS) for Firms (2020), Provision 1.A.11; GIPS Standards Handbook for Firms (Nov. 2020), Discussion of Provision 1.A.11.

[727] *See* CFA Institute Comment Letter (suggesting that ''an [a]dviser could consider hypothetical performance to be relevant to the financial situation and investment objectives of the person if the person has expressed interest in the strategy or the [a]dviser has determined it is an appropriate strategy for the investor based on their (sic) investment needs'').

[728] *See* final rule 206(4)–1(d)(6)(ii). We would consider any calculation information provided alongside the hypothetical performance to be a part of the advertisement and therefore subject to the books and records rule. *See infra* section II.I.

[729] *See* Flexible Plan Investments Comment Letter II.

[730] This obligation would be similar to an adviser's obligation to provide full and fair disclosure to its clients of all material facts relating to the advisory relationship and of conflicts of interest. *See* Fiduciary Interpretation, *supra* footnote 8888, at n.70 (stating that institutional clients, as compared to retail clients, generally have a greater capacity and more resources to analyze and understand complex conflicts and their ramifications).

[731] *See, e.g.,* Withers Bergman Comment Letter; MFA/AIMA Comment Letter I; Resolute Comment Letter.

[732] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.5.c.iv.

respect to assumptions, investment advisers should provide information that includes any assumptions on which the hypothetical performance rests—*e.g.,* in the case of targeted or projected returns, the adviser's view of the likelihood of a given event occurring.

Commenters suggested that we not require advisers to disclose the extent to which hypothetical performance is based on the likelihood of an event occurring because this would require advisers to make speculative statements.[733] Yet, commenters agreed that an adviser should disclose the assumptions it has made.[734]

It is our view that assumptions underlying hypothetical performance should be interpreted to include assumptions that future events will occur. We believe that hypothetical performance, by its nature, contains a speculative element; therefore, requiring advisers to disclose the assumptions that informed a model aligns with the types of restrictions we seek to place on performance presentation that have a high potential to mislead investors. We believe advisers should provide this information so that the intended audience is able to determine, in part, how much value to attribute to the hypothetical performance. Without information regarding criteria and assumptions, we believe that such performance would be misleading even to an investor with the resources and financial expertise to evaluate it.

*Risk Information.* The final rule will require the adviser to provide—or, if the intended audience is a private fund investor, to provide, or offer to provide promptly—sufficient information to enable the intended audience to understand the risks and limitations of using the hypothetical performance in the advertisement in making investment decisions.[735]

Commenters generally supported this condition.[736] However, one commenter suggested that we add a reasonableness component in order to provide more flexibility, requiring advisers to provide *reasonably* sufficient information.[737] We do not believe this change is necessary as we believe that advisers' consideration of the intended audience will provide advisers with flexibility and alleviate some of the burdens imposed by these conditions. In a change from the proposal, we replaced ''Non-Retail Person'' with ''an investor in a private fund'' in order to align with broader changes to the rule (*i.e.,* to dispense with the distinction between Retail and Non-Retail Persons).[738] As explained above, we also replaced references to ''such person'' with ''the intended audience.'' After considering comments,[739] the final rule will not require advisers to provide private fund investors with information on the risks and limitations of using the advertised hypothetical performance. Instead, advisers can merely offer to promptly provide such information.

With respect to risks and limitations, investment advisers should provide information that would apply to both hypothetical performance generally and to the specific hypothetical performance presented—*e.g.,* if applicable, that hypothetical performance reflects certain assumptions but that the adviser generated dozens of other, varying performance results applying different assumptions. Risk information should also include any known reasons why the hypothetical performance might differ from actual performance of a portfolio—*e.g.,* that the hypothetical performance does not reflect cash flows into or out of the portfolio. This risk information will, in part, enable the intended audience to understand how much value to attribute to the hypothetical performance in deciding whether to hire or retain the investment adviser or invest in a private fund managed by the adviser. An adviser should tailor its risk information to its intended audience.

In addition, any communication that is an advertisement under the first prong of the definition of advertisement, and that includes hypothetical performance, will be required to comply with the general prohibitions.[740] As a result, the rule will prohibit advisers from presenting hypothetical performance in such advertisements in a materially misleading way. For example, we would view an advertisement as including an untrue statement of material fact if the advertised hypothetical performance reflected the application of rules, criteria, assumptions, or general methodologies that were materially different from those stated or applied in the underlying information of such hypothetical performance. Also, we would view it as materially misleading for an advertisement to present hypothetical performance that discusses any potential benefits resulting from the adviser's methods of operation without providing fair and balanced discussion of any associated material risks or material limitations associated with the potential benefits.[741] Similarly, an adviser can meets its obligation with respect to an advertisement presenting hypothetical performance that includes an offer to promptly provide risk information to a private fund investor if the adviser makes reasonable efforts to promptly provide such information upon the investor's request.

### *F. Portability of Performance, Testimonials, Endorsements, Third-Party Ratings, and Specific Investment Advice*

Among the performance results that an investment adviser may seek to advertise are those of groups of investments or accounts for which the adviser, its personnel, or its predecessor investment adviser firms have provided investment advice in the past as or at a different entity. In some cases, an investment adviser may seek to advertise the performance results of portfolios managed by the investment adviser before it was spun out from another adviser. Alternatively, an adviser may seek to advertise performance achieved by its investment personnel when they were employed by another investment adviser. This may occur, for example, when a portfolio management team leaves one advisory firm and joins another advisory firm or begins its own firm. Predecessor performance results may be directly relevant to an audience when the advertisement offers services to be provided by the personnel responsible for the predecessor performance, even when the personnel did not work for the adviser disseminating the advertisement (the ''advertising adviser'') during the period for which performance is being advertised.[742]

We believe that the presentation of predecessor performance can mislead

[733] *See, e.g.,* NYC Bar Comment Letter; AIC Comment Letter.

[734] *See, e.g.,* NYC Bar Comment Letter; AIC Comment Letter (stating that the requirements of the second condition are ''consistent with market practice'' but that advisers should not be required to state the likelihood that a given event would occur).

[735] *See* final rule 206(4)–1(d)(6)(iii).

[736] *See* CFA Institute Comment Letter; Withers Bergman Comment Letter.

[737] *See* Flexible Plan Investments Comment Letter II.

[738] *See* proposed rule 206(4)–1(c)(1)(v)(C) (requiring an adviser to ''[p]rovide[ ] (or, if such person is a *non-retail person,* provide[ ] or offer[ ] to provide promptly) sufficient information to enable such person to understand the risks and limitations of using such *hypothetical performance* in making investment decisions.'').

[739] *See, e.g.,* Ropes & Gray Comment Letter; IAA Comment Letter; AIC Comment Letter.

[740] *See supra* section II.B.

[741] *See* final rule 206(4)–1(a)(4).

[742] The term ''predecessor performance'' is defined in final rule 206(4)–1(e) and refers to all situations where an investment adviser presents investment performance achieved by a group of investments consisting of an account or a private fund that was not advised by the investment adviser at all times during the period shown.

investors, especially, for example, when: (i) The team that was primarily responsible for the predecessor performance is different from the team whose advisory services are being offered in the advertisement, (ii) an individual who played a significant part in achieving the predecessor performance is not a member of the advertising adviser's investment team,[743] (iii) the adviser that generated the performance underwent a restructuring, reorganization, or sale,[744] or (iv) an advertising adviser does not clearly disclose that the performance was achieved at a different entity.

We have previously identified characteristics of a restructuring, sale, or reorganization (collectively, ''reorganization'') that likely support a finding that an adviser's business continued to exist where: There was a substantial and direct business nexus between the successor and predecessor advisers; the reorganization was not designed to eliminate substantial liabilities and/or spin off personnel; and, if applicable, the successor adviser assumed substantially all of the assets and liabilities of the predecessor adviser.[745] Under the final rule, we would consider similar factors when analyzing the extent to which an advertising adviser must treat a predecessor adviser's performance as predecessor performance. For example, we do not believe that a change of brand name, without additional differences between the advisory entity before and after the restructuring, would render its past performance as ''predecessor performance.'' Likewise, a mere change in the form of legal organization (*e.g.,* from a corporation to limited liability company) or a change in ownership of the adviser would likely not raise the concerns described in this section.

In the proposal, we considered whether applying the rule's general prohibitions and the more specific performance advertising restrictions would sufficiently alleviate our concerns,[746] or whether specific rule provisions would more appropriately address those concerns.[747] For example, we questioned whether the untrue or misleading implication general prohibition would prevent the display of predecessor performance containing an untrue or misleading implication about a material fact relating to the advertising adviser. As another example, we stated that, depending on the circumstances, predecessor performance results that exclude accounts managed in a substantially similar manner at the predecessor firm may be misleading and implicate the proposed general prohibitions in the rule. We stated that such presentations could result in the inclusion or exclusion of performance results in a manner that is neither accurate nor fair and balanced. Accordingly, we requested comment on whether the advertising rule should include additional provisions on the presentation of predecessor performance results, and we specifically asked about the approach our staff has taken in providing guidance on this issue under the current rule.[748]

Some commenters supported the addition of a provision on this topic, urging us to address predecessor performance in the final rule.[749] Two commenters supported the approach our staff took in its no-action letters and suggested we adopt a rule that would draw from those requirements, with minor modifications.[750] In light of these comments, we believe that placing explicit guardrails on displays of predecessor performance will increase investor protection, in addition to the general prohibitions. Moreover, we expect that clarifying our views on positions taken by our staff over the years will promote consistency of practices among advisory firms and thereby level the playing field.

Investments advisers will be prohibited from displaying predecessor performance in an advertisement, unless the following requirements are satisfied:

(A) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(B) the accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising adviser that the performance results would provide relevant information to investors;

(C) all accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any prescribed time periods; and

(D) the advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.[751]

In addition to applying these specific provisions, advisers should consider the extent to which other provisions of the advertising rule, such as the general prohibitions (including those pertaining to the fair and balanced presentation of information), apply to any display of predecessor performance.

*Primarily Responsible.* In order to present predecessor performance in an advertisement, the person or persons who were primarily responsible for achieving the prior performance results while employed at the predecessor firm must manage accounts at the advertising adviser.[752] We believe that the ''primarily responsible'' requirement will help place critical guardrails on the use of predecessor performance and will require advisers to focus on the role that the individual played in producing the performance (*e.g.,* the extent of the person's decision-making authority or influence). Advisers should consider the substantive responsibilities of those who are responsible for generating the performance at issue and, where more than one individual is primarily

[743] *See, e.g.,* Fiduciary Management Associates, Inc., SEC Staff No-Action Letter (Feb. 2, 1984) (''Fiduciary Management Letter'').

[744] *See, e.g.,* South State Bank, SEC Staff No-Action Letter (May 8, 2018) (''South State Bank Letter'') (the staff stated that it would not recommend enforcement action based on representations designed to ensure advisory clients would not be misled if clients attributed the predecessor adviser's performance to the advertising adviser, including, for example, that it would operate in the same manner and under the same brand name as the predecessor adviser).

[745] *See* Registration of Successors to Broker-Dealers and Investment Advisers, Release No. IA–1357 (Dec. 28, 1992) [58 FR 7–01 (Jan. 4, 1993)].

[746] *See* proposed rule 206(4)–1(a) and (c).

[747] For the discussion that follows, *see generally* 2019 Proposing Release, *supra* footnote 7, at section II.A.6.

[748] *See* Horizon Asset Management, LLC, SEC Staff No-Action Letter (Sept. 13, 1996) (''Horizon Letter''); Great Lakes Advisers, Inc., SEC Staff No-Action Letter (Apr. 3, 1992) (''Great Lakes Letter''); Fiduciary Management Letter; South State Bank Letter. We requested comment on a number of the issues raised by predecessor performance. *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.6.

[749] *See* IAA Comment Letter; CFA Institute Comment Letter (supporting specific provisions on predecessor performance, but suggesting compliance with GIPS standards); Fried Frank Comment Letter (stating that the final rule should explicitly address predecessor performance and supporting a ''principles-based, disclosure-driven approach'' that has a similar framework as the proposed approach to hypothetical performance); Comment Letter of SIFMA (Supplemental) (June 5, 2020) (''SIFMA Supplemental Comment Letter'').

[750] *See* IAA Comment Letter; SIFMA Supplemental Comment Letter.

[751] *See* final rule 206(4)–1(d)(7)(iv); *see also* 2019 Proposing Release, *supra* footnote 7, at sections II.A.5.c.ii and II.A.6.

[752] *See* final rule 206(4)–1(d)(7)(i). Our staff has applied a similar principle when considering the presentation of predecessor performance. *See* Horizon Letter (stating that the staff would not find a display of predecessor performance to be in and of itself misleading based on several representations, including that ''the person or persons who manage accounts at the adviser were also those primarily responsible for achieving the prior performance results'').

responsible for making investment decisions, whether a substantial identity of the group responsible for achieving the prior performance have moved over to the advertising adviser. We anticipate that this principles-based approach will address scenarios where a committee makes the investment decisions and where a single person is responsible for investment decisions. Where a committee managed the group of investments at the predecessor firm, a committee comprising a substantial identity of the membership must manage the portfolios at the advertising adviser.[753]

A person or group of persons is ''primarily responsible'' for achieving prior performance results if the person makes or the group makes investment decisions.[754] Where more than one person is involved in making investment decisions, advisers should consider the authority and influence that each person has in making investment decisions.[755]

*Sufficiently similar accounts.* Under the final rule, an advertising adviser may not present predecessor performance in an advertisement unless the accounts managed at the predecessor and advertising advisers are ''sufficiently similar'' in order to ensure the investor receives relevant information.[756] Prior staff letters took no-action positions with accounts that were ''so similar'' to the advertised accounts.[757] We believe that the language in the final rule provides advisers appropriate flexibility in displaying predecessor performance and would not result in investor confusion.

*Managed in a substantially similar manner.* Under the final rule, an investment adviser using predecessor performance in an advertisement will be required to display all accounts that were managed in a ''substantially similar manner'' at the predecessor adviser, unless excluding any account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods required by the rule.[758] This condition mirrors the related performance provisions of the final rule, which requires investment advisers to include all related portfolios and only permits an adviser to exclude a related portfolio if performance would not be materially higher and if the exclusion of any related portfolio does not alter the presentation of any applicable time periods required by the rule.[759] Accounts that are managed in a substantially similar manner are those with substantially similar investment policies, objectives, and strategies.[760] As a result, advisers can use the same approach for determining the scope of the accounts that are managed in a substantially similar manner as they use to determine which accounts are related portfolios for purposes of displaying related performance.

An adviser that chooses to display predecessor performance information in an advertisement must consider the related performance requirements of the final rule. For example, if an adviser includes predecessor performance and the advertising adviser manages accounts that are related portfolios to those groups of investments depicted in the predecessor performance, then the advertising adviser must include these related portfolios in its performance display.[761]

*Relevant disclosures.* The final rule will require an adviser to clearly and prominently include all relevant disclosures and indicate that the performance results were from accounts managed at another entity.[762] While what disclosures are ''relevant'' will depend on the facts and circumstances, we agree with a commenter's suggestion that the fact that the performance was generated from accounts managed at another entity will always be relevant. Accordingly, the final rule will explicitly require this disclosure.[763] Additionally, advisers should consider what disclosures would be appropriate to comply with the other provisions of the final rule, such as the general prohibitions.

Our amendments to the books and records rule will require an adviser to retain records to support the performance presented.[764] We believe that, in order to avoid misleading presentations of predecessor

[753] Our staff applied a similar principle when considering investment teams or committees. *See* Great Lakes Letter, at n.4 (staff declined to take a no-action position where only one person from a three-person committee transferred from the predecessor adviser to the advertising adviser and where the other two individuals played a significant role stating that, ''at a minimum, there would have to be a substantial identity of personnel among the predecessor's and successor's committees.''); Horizon Letter (staff stated that it would not recommend enforcement action under rule 206(4)–1 where one individual was primarily responsible for achieving performance results at the predecessor firm and, upon joining the advertising adviser, would be a member of a three-person committee. The individual would still have final decision-making authority and the other committee members would only advise the sole decision-maker.).

[754] Commenters generally supported applying guardrails to displays of predecessor performance based on existing staff no-action letters and industry best practices. *See* IAA Comment Letter (citing Horizon Letter, South State Bank Letter, Great Lakes Letter, Fiduciary Management Letter, and Conway Asset Management, Inc., SEC Staff No-Action Letter (Jan. 27, 1989)); Fried Frank Comment Letter; SIFMA Supplemental Comment Letter.

[755] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.6. (stating that it may be difficult to attach relative significance to the role played by each group member where an adviser selects portfolio securities by consensus or committee decision-making). *See also* Great Lakes Letter; Horizon Letter. Commenters generally supported the positon our staff has taken in no-action letters on predecessor performance where a committee makes investment decisions. *See, e.g.,* IAA Comment Letter (suggesting that the final rule require that ''substantially all of the investment decision-makers who manage accounts at the adviser are those primarily responsible for achieving the prior performance results'').

[756] *See* final rule 206(4)–1(d)(7)(ii). Our staff applied a similar principle when considering whether displays of predecessor performance would be relevant to investors. *See* Horizon Letter (stating that the staff would not find a display of predecessor performance to be in and of itself misleading based on several representations, including that ''the accounts managed at the predecessor entity are so similar to the accounts currently under management that the performance results would provide relevant information to prospective clients'').

[757] *See* IAA Comment Letter (suggesting that the Commission require the accounts to be ''sufficiently similar'' instead of ''so similar'').

[758] *See* final rule 206(4)–1(d)(7)(iii). Our staff applied a similar principle when considering whether displays of predecessor performance would be relevant to investors. *See* Horizon Letter (stating that the staff would not find a display of predecessor performance to be in and of itself misleading based on several representations, including that ''all accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance''); IAA Comment Letter (supporting this provision).

[759] *See* final rule 206(4)–1(d)(4); 2019 Proposing Release, *supra* footnote 7, at section II.A.5.c.ii, n.279.

[760] *See* final rule 206(4)–1(e)(15). Our staff has stated that it would not recommend enforcement action if advisers present predecessor performance where the adviser presents the composite performance of all of the predecessor firm's accounts that had the same investment objectives and were managed using the same investment strategies that the adviser will manage at the new firm. *See* Horizon Letter.

[761] In presenting such performance, advisers should also consider the general prohibitions and other performance advertising provisions of the final rule.

[762] *See* final rule 206(4)–1(d)(7)(iv). Our staff applied a similar principle when considering whether displays of predecessor performance would be relevant to investors. *See* Horizon Letter (stating that the staff would not find a display of predecessor performance to be in and of itself misleading based on several representations, including that ''the advertisement includes all relevant disclosures, including that the performance results were from accounts managed at another entity.''). Disclosures that are subject to a clear and prominent standard under final rule 206(4)–1 should be included within the advertisement. *See supra* footnote 286.

[763] *See* IAA Comment Letter (suggesting the addition of ''including that the performance results were from accounts managed at another entity'' to the rule text).

[764] *See* final rule 204–2(a)(16). *See also* Great Lakes Letter (stating that rule 204–2(a)(16) applies to a successor's use of a predecessor's performance data).

performance, an adviser must have access to the books and records underlying the performance.[765] We have applied this concept more generally under the final rule, which will also require that an adviser have a reasonable basis for believing that it will be able to substantiate (upon demand by the Commission) all material statements of fact contained in an advertisement.[766]

Certain commenters that addressed this aspect of the proposal requested that we preserve flexibility for the types of records that support predecessor performance,[767] while another commenter disagreed that flexibility was appropriate and suggested permitting predecessor performance only where the records required under rule 204–2 were available.[768] Without supporting information, we are concerned about the accuracy of such performance displays and that such information could be misleading. We do not believe that an advertising adviser could recreate performance based on a sampling of investor statements and/or display performance from a prior firm because we are concerned that such an approach has a heightened risk of cherry picking performance. Allowing a sampling of information to support performance displays is inconsistent with our general approach to require advisers to display all applicable performance (*e.g.,* related performance) to mitigate these cherry-picking concerns.

Because the final rule addresses the portability of adviser performance, our staff will withdraw several no-action letters our staff has issued on this topic.[769] However, other related letters will not be withdrawn in connection with this rulemaking since they address different activity than the activity covered by our final rule text on predecessor performance. Those letters address topics including an adviser's use of performance generated by predecessor accounts (*e.g.,* separate accounts or private funds) in RIC advertisements and filings [770] and the establishment of pools in order to generate performance track records.[771] These letters generally address the use of performance from *predecessor accounts* (*i.e.,* where the same adviser uses performance generated by one investment vehicle in an advertisement for another product) rather than performance of a predecessor advisory firm.[772]

Although we requested comment on the portability of testimonials, endorsements, third-party ratings, and specific investment advice,[773] commenters did not address these topics. To the extent that testimonials, endorsements, third-party ratings, and specific investment advice contain performance from a predecessor firm, the general prohibitions apply to such testimonials, endorsements, and third-party ratings. We do not believe we need to address their portability specifically as the general prohibitions, depending on the facts and circumstances, will have the effect of prohibiting advisers from presenting misleading information to investors by using outdated testimonials, endorsements, and third-party ratings.

### *G. Review and Approval of Advertisements*

The final rule will not require investment advisers to review and approve their advertisements prior to dissemination, unlike the proposal. The proposed advertising rule would have required an adviser to have an advertisement reviewed and approved for consistency with the requirements of the proposed rule by a designated employee before disseminating the advertisement, except in certain circumstances.[774] We proposed this requirement because we believed it might reduce the likelihood of advisers violating the proposed rule. We believed it was important that investment advisers implement a process designed to promote compliance with the proposed rule's requirements. We also proposed to require that advisers create and maintain a written record of the review and approval of the advertisement, which would have allowed our examination staff to better review adviser compliance with the rule.

Many commenters opposed this requirement or suggested modifications to it. Commenters expressed concern that it would impose a significant compliance burden on advisers, especially smaller firms.[775] Many commenters also argued that such a requirement would be duplicative of the compliance rule, pointing out that most advisers already have implemented policies and procedures to review advertisements for accuracy prior to dissemination.[776] Other commenters stated that an inflexible review and approval requirement covering nearly all advertisements would impair an adviser's ability to communicate timely with clients, resulting in poor client service or slow responses during periods of market volatility.[777] Commenters claimed that the proposal, which did not exclude one-on-one communications from the definition of advertisement, would effectively require advisers to screen *all* communications to assess whether a communication would constitute an advertisement subject to the review and approval requirement, or met one of the requirement's exceptions.[778] Consequently, some of these commenters suggested that if we adopt this requirement, the final rule should expand the exceptions to include, for example, responses to questions that contain pre-approved template language, advertisements to Non-Retail

[765] Our staff took this approach in stating that it would not recommend enforcement action under section 206 of the Advisers Act or the current advertising rule if an advertising adviser presents performance results achieved at another firm based on several representations, including that the advertising adviser would keep the books and records of the predecessor firm that are necessary to substantiate the performance results in accordance with rule 204–2(a)(16). *See* Horizon Letter; *see also* Great Lakes Letter, at n.3 (stating that rule 204–2(a)(16) ''applies also to a successor's use of a predecessor's performance data''). We understand that investment advisers who consider this staff no-action letter currently keep copies of all advertisements containing performance data and all documents necessary to form the basis of those calculations.

[766] *See* final rule 206(4)–1(a)(2).

[767] *See* SIFMA AMG Comment Letter II; IAA Comment Letter (stating that an adviser should be permitted to substantiate performance using publicly available information and audit or verification statements); MarketCounsel Comment Letter (noting that the books and records of the predecessor firm are often unavailable due to contractual or privacy restrictions and suggesting that the Commission permit advertising advisers to recreate performance based on a sampling of client statements and/or display performance from a prior firm in a scenario where the advertising adviser has a copy of the advertisement and where the prior firm was subject to the books and records rule).

[768] *See* CFA Institute Comment Letter (stating that alternative books and records requirements should not be an option for predecessor performance because verification reports will not satisfy the books and records requirements in most cases, nor would performance information that has been subject to a financial statement audit).

[769] *See infra* section II.J.

[770] *See, e.g.,* MassMutual Institutional Funds, SEC Staff No-Action Letter (Sept. 28, 1995); Nicholas-Applegate, SEC Staff No-Action Letter (Aug. 6, 1996); Growth Stock Outlook Trust Inc., SEC Staff No-Action Letter (Apr. 15, 1986).

[771] *See* Dr. William Greene, SEC Staff No-Action Letter (Feb. 3, 1997).

[772] *See, e.g.,* Salomon Brothers Asset Management Inc., SEC Staff No-Action Letter (July 23, 1999). *See also,* Jennison Associates LLC, SEC Staff No-Action Letter (July 6, 2000).

[773] *See* 2019 Proposing Release, *supra* footnote 7, at section II.A.6.

[774] *See* proposed rule 206(4)–1(d).

[775] *See, e.g.,* FPA Comment Letter; MFA/AIMA Comment Letter I.

[776] *See, e.g.,* SBIA Commenter Letter; SIFMA AMG Comment Letter I.

[777] *See, e.g.,* Commonwealth Comment Letter.

[778] *See, e.g.,* NSCP Comment Letter; SIFMA AMG Comment Letter I.

Persons, and interactive social media content.[779]

After considering these comments, we are not adopting the proposed internal review and approval requirement. Instead, we believe an adviser's existing obligations under the compliance rule will allow an adviser to tailor its compliance program to its own advertising practices to prevent violations from occurring, detect violations that have occurred, and correct promptly any violations that have occurred.[780] In adopting the compliance rule, the Commission stated that investment advisers should adopt policies and procedures that address ''. . . the accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements.'' [781] We believe for these compliance policies and procedures to be effective, they should include objective and testable means reasonably designed to prevent violations of the final rule in the advertisements the adviser disseminates.

Advisers can establish such an objective and testable compliance policies and procedures through a variety of tools. For example, internal pre-review and approval of advertisements could serve as an effective component of an adviser's compliance program. Other effective methods to prevent issues could include reviewing a sample of advertisements based on risk or pre-approving templates. Effective methods to detect and correct promptly violations and adjust practices to prevent future violations might include spot-checking advertisements and periodic reviews.[782] Commenters confirmed our understanding that the internal policies and procedures of many advisers currently require some level of review for advertisements, although not pre-review of every advertisement.[783] Advisers should also consider the extent to which reasonably designed policies and procedures should involve training on the requirements and prohibitions of the advertising rule for any employee(s) involved in the creation, review, or dissemination of adviser advertisements.

In addition, consistent with the Commission's examination authority, upon request, advisers must promptly provide information about their compliance policies and procedures and any records that document implementation of those policies and procedures to us and our staff.[784] The Commission's ability to collect information in a timely fashion through its examination authority, and evaluate such information for compliance with the Federal securities laws, is essential to our mission of protecting investors and our securities markets.[785] Indeed, the prompt production of records to the Commission is central to our mission of protecting investors, and is imperative to an effective and efficient examination program.[786]

In connection with the proposed review and approval requirement, we also proposed to require investment advisers to maintain a copy of all written approvals of advertisements by designated employees.[787] As we are not adopting the proposed pre-use approval requirement, we are also not adopting this associated recordkeeping requirement.

*H. Amendments to Form ADV*

We are adopting, largely as proposed, amendments to Item 5 of Form ADV Part 1A to improve information available to the Commission and the public about advisers' marketing practices. Item 5 currently requires an adviser to provide information about its advisory business.[788] We proposed to add a subsection L (''Marketing Activities'') to require information about an adviser's use in its advertisements of performance results, testimonials, endorsements, third-party ratings, and references to its specific investment advice.

Several commenters supported the proposed additions to Form ADV,[789] while others questioned their usefulness.[790] Some commenters suggested removing the question regarding whether an adviser's performance results were verified, arguing that it could disadvantage smaller advisers or could provide investors with a false assurance of accuracy.[791] Other commenters suggested that we include questions about an adviser's use of other types of performance, such as predecessor performance,[792] or specific types of hypothetical performance.[793] One commenter opposed including questions regarding the amount or range of compensation paid for testimonials, endorsements, or third-party ratings, arguing that this could be commercially sensitive information.[794] Others suggested technical improvements to the proposed section. For example, one commenter requested that we clarify how frequently advisers must update responses to Item 5.L.[795] Another commenter requested that we define advertisement and other relevant terms

[779] *See, e.g.,* MFA/AIMA Comment Letter I; MMI Comment Letter; ICE Comment Letter.

[780] *See* Compliance Program Adopting Release, *supra* footnote 371, at 74716. Rule 206(4)–7 makes it unlawful for an investment adviser to provide investment advice unless the adviser has adopted and implemented written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules that the Commission has adopted under the Act, which will include final rule 206(4)–1 and its specific requirements. *See* rule 206(4)–7(a). Rule 206(4)–7 also requires investment advisers to review, no less than annually, the adequacy of the policies and procedures and the effectiveness of their implementation, and to designate who is responsible for administering the policies and procedures adopted under the rule. *See id.* at (b)–(c).

[781] *See* Compliance Program Adopting Release, *supra* footnote 371, at 74716.

[782] *See* Compliance Program Adopting Release, *supra* footnote 371, at 74716. If advisers indirectly market or solicit through third parties, they should consider how to tailor policies and procedures according to the risks posed by those third parties making statements that constitute advertisements under the rule. *See supra* section II.C.3.

[783] *See, e.g.,* SBIA Comment Letter; SIFMA AMG Comment Letter I (stating that advisers' compliances programs currently include upfront reviews of templates, spot-checking or sampling advertisements after dissemination, or a risk-based approach depending on the type of advertisement).

[784] *See* 15 U.S.C. 80b–4 (section 204 of the Investment Advisers Act) (providing the Commission with examination authority over ''all records'' of an investment adviser); *see* rule 204–2(g)(2) (requiring prompt production of records); *see* rule 204–2(a)(17) (requiring investment advisers to make and keep records of their policies and procedures formulated pursuant to rule 206(4)–7).

[785] *See, e.g.,* 15 U.S.C. 80b–4 (section 204 of the Investment Advisers Act) (providing the Commission with examination authority); *see also* 17 CFR 275.204–2 (rule 204–2 under the Investment Advisers Act) (Commission books and records rules).

[786] *See, e.g.,* Electronic Recordkeeping by Investment Companies and Investment Advisers, Release No. IA–1945 (May 24, 2001) [66 FR 29224 (May 30, 2001)] (explaining that the ''continuing accessibility and integrity of fund and adviser records are critical to the fulfillment of our oversight responsibilities,'' and noting the Commission's expectation that a fund or adviser would be permitted to delay furnishing electronically stored records for more than 24 hours only in ''unusual circumstances.'').

[787] *See* proposed rule 204–2(a)(11)(iii).

[788] Exempt reporting advisers (that are not also registering with any state securities authority) are not required to complete Item 5 of Part 1A. Accordingly, subsection L of Item 5 of Part 1A will not be required for such advisers. *See, e.g.,* Instruction 3 to Form ADV: General Instructions (''How is Form ADV organized''). Exempt reporting advisers will not be subject to the final rule. *See supra* footnote 21.

[789] *See* CFA Institute Comment Letter; NRS Comment Letter; NAPFA Comment Letter.

[790] *See, e.g.,* SIFMA AMG Comment Letter I.

[791] *See, e.g.,* JG Advisory Comment Letter; Pickard Djinis Comment Letter.

[792] *See* CFA Institute Comment Letter.

[793] *See* NRS Comment Letter (suggesting that Form ADV specifically request that an adviser disclose whether its advertisements include backtested performance or projected or targeted returns).

[794] *See* SIFMA AMG Comment Letter I.

[795] *See* NRS Comment Letter.

of Item 5.L in the Form ADV Glossary.[796]

After considering the comments, we are adopting new subsection L to Item 5 of Form ADV with slight modifications to the ordering and content of the subsection versus the proposal. We are also amending the Form ADV Glossary to incorporate the final rule's definitions for ''advertisement,'' ''endorsement,'' ''hypothetical performance,'' ''testimonial,'' ''third-party rating,'' and ''predecessor performance.'' Because new subsection L is included under Item 5 of Form ADV, advisers will be required to update responses to these questions in their annual updating amendment only.[797] We continue to believe that this new information will be useful for staff in reviewing an adviser's compliance with the final rule, including the restrictions and conditions on advisers' use in advertisements of performance presentations and third-party statements.

First, we are combining several proposed questions into Item 5.L(1), which will require an adviser to state whether any of its advertisements include performance results, a reference to specific investment advice, testimonials, endorsements, or third-party ratings.[798] Unlike under the proposal, this item will require an adviser to address separately whether its advertisements include testimonials, endorsements, and third-party ratings. We believe that requiring advisers to address each separately will provide more specific and useful information to our staff regarding whether an adviser engages in these marketing practices. We are not including the proposed related question that would have asked whether the performance results in Item 5.L(1) were reviewed or verified, as proposed. We agree with commenters that ''verification'' may inappropriately suggest an assurance of accuracy to investors, and disadvantage smaller advisers that may not obtain third-party reviews of their performance results.[799]

As proposed, we are requiring an adviser to state whether the adviser pays or otherwise provides cash or non-cash compensation, directly or indirectly, in connection with the use of testimonials, endorsements, or third-party ratings.[800] This question will only require 'yes' or 'no' responses, and will not require additional information about the amount or range of compensation provided to avoid the disclosure of potentially sensitive information as suggested by one commenter.[801]

Third, unlike under our proposal, we are adding items requiring an adviser to state whether any of its advertisements include hypothetical performance and predecessor performance, respectively. We agree with commenters' suggestions that this information could be useful for our staff preparing for examinations, especially considering that hypothetical performance can pose a heightened risk of misleading investors.[802] Additionally, as explained above, the final rule specifically addresses when advisers can include predecessor performance in advertisements.[803] Responses regarding predecessor performance will enable our examination staff to better assess compliance with this new provision of the rule.

*I. Recordkeeping*

We are adopting amendments to the books and records rule, largely as proposed, to reflect the final rule and to help further the Commission's inspection and enforcement capabilities. Investment advisers must make and keep records of all advertisements they disseminate, and certain alternative methods for complying with this provision are available for oral advertisements, including oral testimonials and oral endorsements.[804] If an adviser provides an advertisement orally, the adviser may, instead of recording and retaining the advertisement, retain a copy of any written or recorded materials used by the adviser in connection with the oral advertisement.[805] If an adviser's advertisement includes a compensated oral testimonial or endorsement, the adviser may, instead of recording and retaining the advertisement, make and keep a record of the disclosures provided to investors.[806] Further, if an adviser's disclosures with respect to a testimonial or endorsement are not included in the advertisement, then the adviser must retain copies of such disclosures provided to investors.[807]

Commenters generally disagreed with this expansion of the books and records rule, which currently only requires advisers to retain advertisements sent to ten or more persons. According to commenters, advisory firms of all sizes would face compliance challenges, especially smaller advisers, if required to maintain all advertisements.[808] We believe, however, that this change is necessary to conform the books and records rule to the definition of advertisement and is designed to ensure advisers comply with the requirements in the final rule.[809] Our decision to narrow the proposed definition of advertisement by excluding one-on-one communications from the first prong of the definition (other than most communications that include hypothetical performance) will lessen any burden imposed by the associated recordkeeping obligations.

One commenter asked us to clarify that electronic mail (''email'') archives are an acceptable method of maintaining records of advertisements that are disseminated to investors, and we agree.[810] The final rule does not prescribe or prohibit any particular method of maintaining records. Rather, it requires the adviser to maintain and preserve these records ''in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the . . . advertisement.''[811] We believe it would be permissible for an adviser to store records using email archives (including in cloud storage or with a third-party vendor), provided that the adviser can promptly produce records in accordance with the recordkeeping rule[812] and statements of the Commission.[813]

[796] *See* Pickard Djinis Comment Letter.

[797] *See* Instruction 4 to Form ADV: General Instructions (''When am I required to update my Form ADV?'').

[798] The question will exclude testimonials and endorsements given by certain affiliated persons of the adviser that satisfy rule 206(4)–1(b)(4)(ii).

[799] *See* JG Advisory Comment Letter; CFA Institute Comment Letter.

[800] This question will appear in Item 5.L(2), but had been proposed as Item 5.L(4).

[801] *See* SIFMA AMG Comment Letter I.

[802] *See, e.g.,* CFA Institute Comment Letter; NRS Comment Letter.

[803] *See supra* section II.F.

[804] *See* final rule 204–2(a)(11)(i)(A).

[805] *See* final rule 204–2(a)(11)(i)(A)(*1*).

[806] *See* final rule 204–2(a)(11)(i)(A)(*2*).

[807] *See* final rule 204–2(a)(11)(i)(A) and (15)(i).

[808] *See* JG Advisory Comment Letter; NAPFA Comment Letter; FPA Comment Letter.

[809] *See also* NRS Comment Letter (stating that ''most advisers have developed procedures requiring the retention of all written communications, so that individuals within the firm do not have the discretion to determine whether or not a particular communication is required under rule 204–2(a)(7).''). As proposed, we are not changing the requirement that advisers keep a record of communications other than advertisements (*e.g.,* notices, circulars, newspaper articles, investment letters, and bulletins) that the investment adviser disseminates, directly or indirectly, to ten or more persons.

[810] *See* JG Advisory Comment Letter.

[811] Final rule 204–2(e)(3)(i). This provision has not been amended from the current rule.

[812] *See* final rule 204–2(g)(2)(ii). This provision has not been amended from the current rule.

[813] *See* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Release No.

The current recordkeeping rule requires advisers to retain originals of all written communications received and copies sent by the adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations.[814] As proposed, the final rule will amend the current rule to also require advisers to maintain written communications relating to the performance or rate of return of any portfolios (as defined in the final marketing rule).[815]

The current recordkeeping rule requires advisers to retain all accounts, books, internal working papers, and other documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any advertisement.[816] As proposed, the final rule will amend the current rule to also require advisers to maintain accounts, books, internal working papers, and other documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any portfolios (as defined in the final marketing rule).[817] In addition, the supporting records of investment advisers that display hypothetical performance must include copies of all information provided or offered pursuant to the hypothetical performance provisions of the final rule.[818] These changes are designed to help to facilitate the Commission's inspection and enforcement capabilities.

In a change from the proposal, the final rule will require advisers to maintain documentation of communications relating to predecessor performance.[819] This change complements the predecessor performance provisions of the final rule and will help ensure that advertising advisers retain appropriate documentation to substantiate displays of predecessor performance. One commenter noted that advisers often have difficulty complying with the books and records requirements in connection with predecessor performance.[820] For the reasons discussed above, we decline to provide additional flexibility.[821]

In a change from the proposal, we will require advisers to make and keep a record of who the ''intended audience'' is pursuant to the hypothetical performance and model fee provisions of the final marketing rule.[822] Our examination staff may choose to review the adviser's policies and procedures (for displaying hypothetical performance) against the records retained in connection with this new recordkeeping provision when determining whether the adviser satisfied the hypothetical performance policies and procedures condition. Also, we believe this additional requirement will assist our examination staff in confirming that advisers are appropriately considering the target audience when preparing and disseminating net performance and hypothetical performance.

We proposed to require investment advisers to maintain a copy of all written approvals of advertisements by designated employees in order to track a corresponding proposed provision of the advertising rule relating to a review and approval process.[823] Since we are not adopting the provision of the proposed advertising rule relating to review and approval, we are not adopting the corresponding proposed recordkeeping requirement. As discussed above, we are persuaded by commenters who asserted that an adviser's own policies and procedures would provide an effective compliance mechanism.[824]

The combination of the current solicitation rule and current advertising rule into a single marketing rule resulted in additional changes to the books and records rule. We are adopting, as proposed, changes to the books and records rule in order to correspond to the marketing rule's provisions that address testimonials and endorsements. The rule will require investment advisers to make and keep any communication or other document related to the investment adviser's determination that it has a reasonable basis for believing that a testimonial or endorsement complies with rule 206(4)–1 and that a third-party rating complies with rule 206(4)–1(c)(1).[825] We are not adopting amendments to the books and records rule that would specifically reference the adviser's obligation to retain the written agreements with promoters[826] because such a provision would be duplicative of the current books and records rule.[827]

We did not receive any comments on the proposed amendments to the recordkeeping rule provisions that corresponded to the proposed amendments to the solicitation rule. For the reasons discussed in the proposal regarding amendments to the solicitation rule, we are retaining the current recordkeeping rule's requirement for investment advisers to keep a record of the disclosures delivered to investors, which now apply to testimonials, endorsements, and third-party ratings. However, we are adjusting the wording to correspond to changes to the final marketing rule that permit either the investment adviser or the promoter to provide the disclosure. Further, in a change from the current solicitation rule, the final marketing rule will not require a promoter to provide an investor with the adviser's brochure. Accordingly, as proposed, we will remove the corresponding books and records requirement as no longer relevant or necessary.

As discussed above, in a change from the proposed amendments to the solicitation rule, the final rule contains a partial exemption (from the disclosure requirements associated with testimonials and endorsements in the final rule) for an adviser's affiliated personnel. The amended recordkeeping rule will now contain a corresponding requirement for advisers that rely on the exemption to keep a record of the names of all affiliated personnel and document their affiliates' status at the time the

IC–33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] (interim final rule), at n.44. *See also* JG Advisory Comment Letter (suggesting that the Commission clarify that email archives are an acceptable method of recordkeeping in certain contexts).

[814] *See* current rule 204–2(a)(7)(iv).

[815] *See* final rule 204–2(a)(7)(iv).

[816] *See* current rule 204–2(a)(16).

[817] *See* final rule 204–2(a)(16). *See also* Recordkeeping by Investment Advisers, Release No. IA–1135 (Aug. 17, 1988) [53 FR 32033 (Aug. 23, 1988)] (describing as ''supporting records'' the documents necessary to form the basis for performance information in advertisements that are required under rule 204–2(a)(16)).

[818] *See* final rule 206(4)–1(d)(6), which will prohibit hypothetical performance in an advertisement except under certain conditions, including a requirement that the investment adviser provides (or offers to provide promptly to a recipient that is a private fund investor) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions. Any such supplemental information that is required by final rule 206(4)–1 to be a part of the advertisement is subject to the books and records rule. *See* final rule 204–2(a)(16).

[819] *See* proposed rule 204–2(a)(7)(iv). *See also* 2019 Proposing Release, *supra* footnote 7, at sections II.A.6. and II.C. (requesting comment about whether to amend the books and records rule to address the substantiation of performance results from a predecessor firm and whether the Commission should amend the rule to address specifically other provisions of the proposed advertising rule).

[820] *See* SIFMA AMG Comment Letter II.

[821] *See supra* section I.F.

[822] *See* final rule 204–2(a)(19). *See also* final rule 206(4)–1(d)(6) and (e)(10)(ii)(B).

[823] *See* proposed rule 204–2(a)(11)(iii).

[824] *See, e.g.,* NRS Comment Letter.

[825] *See* final rule 204–2(a)(15)(ii).

[826] *See* final rule 206(4)–1(b)(2)(ii).

[827] Advisers are already required to retain the written agreement pursuant to current rule 204–2(a)(10).

investment adviser disseminates the testimonial or endorsement.[828]

Finally, we are adopting, as proposed, the requirement that an adviser retain a copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement.[829] Commenters expressed concerns about not being able to obtain a copy of the questionnaire or survey.[830] As discussed above, we recognize this concern and the rule will require an adviser to retain a copy of this material only in the event the adviser obtains a copy of the questionnaire or survey (*i.e.,* an adviser would not be *required* to obtain a copy of the questionnaire or survey in order to comply with rule 206(4)–1 or rule 204–2).

*J. Existing Staff No-Action Letters*

Staff in the Division of Investment Management reviewed certain of our staff's no-action letters that addresses the application of the advertising and solicitation rules to determine whether any such letters should be withdrawn in connection with the adoption of the marketing rule. Because we are rescinding the solicitation rule, the staff no-action letters that address that rule will be nullified.[831] Additionally, pursuant to the staff's review, the staff will be withdrawing the staff's remaining no-action letters and other staff guidance, or portions thereof, as of the compliance date of the final rules.[832] A few commenters supported this approach, suggesting that the final rule should either supersede or incorporate every letter.[833] Other commenters requested that certain no-action letters not be withdrawn that were issued to solicitors who would otherwise be subject to the rule's disqualification provisions.[834] These commenters alternatively requested that the Commission grandfather such solicitation arrangements if these letters are withdrawn.

Based on the staff's review, we understand that some solicitors may continue to conduct solicitation activity consistent with the conditions stated in certain of the solicitor disqualification letters identified below.[835] The majority of these letters, however, pertain to events that occurred more than ten years prior to the effective date of the marketing rule and thus would not be disqualifying events under the marketing rule.[836] The nullification of these solicitation disqualification letters will not have an impact on the relevant solicitor's eligibility under the rule. For the minority of the solicitor disqualification letters that involve events that occurred within the rule's ten-year lookback period, however, nullification of these letters could trigger disqualification under the marketing rule for that underlying event. To avoid this result, we understand that the staff will take a no-action position with respect to the events in those letters to prevent those solicitors from being deemed disqualified under the marketing rule. This position is designed primarily to assist the phase-out of these letters as of the compliance date of the final rule.[837]

*K. Transition Period and Compliance Date*

The final rule will provide an eighteen-month transition period between the effective date of the rule and the compliance date. While we had proposed a one-year transition period, two commenters requested a longer transition period to prepare for the new rule's requirements.[838] One of these commenters argued that a two-year transition period would be more appropriate given the compliance burden of implementing the proposed review and approval requirement.[839] We did not adopt the proposed pre-review and approval requirement; nevertheless, we appreciate commenters' concerns. Accordingly, the compliance date will be eighteen months following the effective date of the rules. Any advertisements disseminated on or after the compliance date by advisers registered or required to be registered with the Commission would be subject to the new marketing rule.

The compliance date for the amended recordkeeping rule will also provide an eighteen-month transition date from the effective date of the rule. Advisers filing Form ADV after a similar eighteen-month transition period from the effective date of the rule will be required to complete the amended form. Importantly, Form ADV does not require an adviser to update responses to Item 5 promptly by filing an other-than-annual amendment, and if an adviser submits an other-than-annual amendment, the adviser is not required to update its response to Item 5 even if the response has become inaccurate.[840] Therefore, each adviser is only responsible for filing an amended form that includes responses to the amended questions in Item 5 in its next annual updating amendment that is filed after the eighteen-month transition period.

*L. Other Matters*

Pursuant to the Congressional Review Act,[841] the Office of Information and Regulatory Affairs has designated this rule a ''major rule'' as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

**III. Economic Analysis**

*A. Introduction*

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Whenever we engage in rulemaking and are required to consider or determine whether an action is necessary or appropriate in the public interest, section 202(c) of the Advisers Act requires the Commission to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. The following analysis considers, in detail, the potential economic effects that may result from the final rule, including the benefits and costs to market participants as well as the broader implications of the final rule for efficiency, competition, and capital formation. Where possible, the Commission quantifies the likely economic effects of the final rule; however, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges. In some cases, quantification is particularly challenging due to the number of assumptions that would be

[828] *See* final rule 204–2(a)(15)(iii).

[829] *See* final rule 204–2(a)(11)(ii).

[830] *See, e.g.,* Blackrock Comment Letter; AIC Comment Letter.

[831] The order granting exemptive relief under rule 206(4)–3 is also terminated. *See* In the Matter of Blackrock, Investment Advisers Release Nos. 2971 (Jan. 4, 2010) [75 FR 1421 (Jan. 11, 2010)] (application) and 2988 (Feb. 26, 2010) (order) (stating that ''the Applicant will rely on the Order only for so long as the Cash Solicitation Rule in effect as of the date of the Order is operative.'').

[832] A list of the letters to be withdrawn will be available on the Commission's website.

[833] IAA Comment Letter; Mercer Comment Letter.

[834] *See, e.g.,* SIFMA AMG Comment Letter II; Mercer Comment Letter; Stansberry Comment Letter.

[835] *See also,* Stansberry Comment Letter.

[836] *See* final rule 206(4)–1(e)(4).

[837] We believe that the need for this position will likely be temporary since the events covered by these letters, over time, will fall outside the ten-year lookback period for purposes of disqualification under the rule.

[838] *See* FPA Comment Letter; MFA/AIMA Comment Letter I.

[839] *See* MFA/AIMA Comment Letter I.

[840] *See* Form ADV General Instruction 4.

[841] 5 U.S.C. 801 *et seq.*

required to forecast how investment advisers would respond to the new conditions of the final rule, and how those responses would in turn affect the broader market for investment advice and the investors' participation in this market. Nevertheless, as described more fully below, the Commission is providing both a qualitative assessment and, where feasible, a quantified estimate of the economic effects.

In large part, the scope of these costs and benefits is determined by the scope of the rule's definition of advertisement. The final rule's definition includes many of the types of communications subject to the current advertising rule. The final rule, however, will expressly apply the protections of the rule to investors in private funds, and advisers will now incur costs related to these communications, to the extent that their current practices differ from the final rule. In addition, the definition's scope has been expanded to include communications made by promoters, including cash-compensated promoters, who were previously subject to the cash solicitation rule, and non-cash-compensated promoters who were not. Some of these affected promoters whose communications will be newly defined as advertisements may also be registered broker-dealers whose communications may be subject to other regulatory requirements governing communications and advertisements, including those under the Exchange Act, the rules promulgated thereunder (including Regulation BI), and FINRA rules (including FINRA rule 2210). The final rule's application to promoters that are registered broker-dealers relating to endorsements to private fund investors may create some overlap in regulation to the extent regulatory requirements under the Exchange Act and FINRA rules apply to their promotional activities. This may create burdens on these promoters to the extent their compliance with these other regulatory requirements does not fully satisfy the final rule. However, both the costs and benefits of the testimonial and endorsement requirements will be mitigated by the exclusions from the endorsement requirements that will apply to these registered broker-dealers.

Other aspects of the final rule will also yield costs and benefits, such as the final rule's general prohibitions on certain marketing practices. The impact of these changes are generally limited to the extent that communications are subject to similar restrictions under the current advertising rule, the current solicitation rule, and the general anti-fraud provisions of the securities laws, and the extent to which the final rule's prohibitions conform to current market practices. The impact is more pronounced with respect to communications newly subject to the definition of an advertisement and not previously subject to the solicitation rule—particularly to communications by solicitors who are not cash-compensated. In addition, the rules and rescission of existing no-action letters may increase certainty because advisers who choose to advertise will be able to follow the requirements of the final rules rather than various no-action letters, which could ultimately reduce compliance costs. Conversely, to the extent that the specificity of the rules prompts some advisers to devote greater resources to ensure compliance obligations under the final rules, the requirements of the rules may impose greater costs on such funds and advisers. Changes in costs of compliance for advisers ultimately could affect investors to the extent that any changes in costs would be passed down to them in the form of changed fund operating expenses or higher advisory fees.

In addition, the rule will (i) permit investment advisers to use certain features in an advertisement, such as testimonials and endorsements, subject to certain conditions, such as disclosing information that would help investors evaluate the advertisement, and (ii) prohibit third-party ratings and investment adviser performance in advertisements unless they comply with certain conditions. The ability to use testimonials and endorsements will likely have a less pronounced impact on advisers that are currently complying with the solicitation rule because this aspect of the marketing rule is drawn from the current solicitation rule. The impact of restrictions in the marketing rule related to the use of performance advertising is likely similar on advisers currently subject to the advertising or solicitation rule because this aspect of the final rule permits certain activity that is not permissible under either current rule. If an adviser that is subject to the current advertising rule is implementing practices similar to those of the recipients of staff letters with respect to performance advertising, the impact of this new aspect of the final rule may be less pronounced for these advisers as compared to the impact on other advisers to the extent that there are some similarities between the final rule and the staff letters.

The Commission is also adopting amendments to Form ADV that are designed to provide additional information regarding advisers' marketing practices, and amendments to the Advisers Act books and records rule to correspond to the features of the marketing rule. The final rule reflects market developments since 1961 and 1979, when rules 206(4)–1 and 206(4)–3, respectively, were adopted, as well as practices addressed in staff no-action letters. These market developments include advances in communication technology and marketing practices that did not exist at the time the rules were adopted and may fall outside of the scope of the current rules.

*B. Broad Economic Considerations*

While we discuss investment advisers' many diverse marketing methods and practices in detail later, here we discuss the broad economic considerations that frame our economic analysis of the final rule and describe the relevant structural features of the market for investment advice and its relationship to marketing of advisory services and private funds. Key to this framework is the problem that investors face when searching for an investment adviser; specifically the lack of information that investors may have about the ability and potential fit of an investment adviser for the investor's preferences. By setting up this economic framework, we can see how the characteristics of the market for investment advice and its participants can influence the costs and benefits of the final rule and its impact on efficiency, competition, and capital formation.

Information Usefulness

The usefulness of the information in investment adviser advertisements is an important factor in determining how investors decide with which investment advisers to engage. For the purposes of the final rule, we use the term ''ability'' to refer to the usefulness of advice an investment adviser provides. The ''potential fit'' of an investment adviser refers to attributes that investors may have specific preferences for, such as communication style, investment style, or risk preference. For example, some investors would prefer an investment adviser that does not proactively provide advice or suggest investments, while others might prefer a more active communication and management style.

While the effectiveness and usefulness of an investment adviser's advertisements can have direct effects on the quality of the matches that investors make with investment advisers—in terms of both fit and better returns from the investment—there may be important indirect effects as well. If the final rule provides additional methods for investment advisers to

credibly and truthfully advertise their ability and potential fit with investors, investment advisers may have a greater marginal incentive to invest more in the quality of their services, because advisers would have additional methods to communicate their ability and potential fit through advertisements. Additionally, because investors might be able to better observe the relative qualities of competing investment advisers, the final rule may also enhance competition among investment advisers. In summary, to the extent that the final rule improves the effectiveness and usefulness of investment adviser advertisements, the final rule could also have a secondary effect of increasing competition among investment advisers, and encourage investment in the quality of services.

Information Access

Investors generally have access to a variety of sources of information on the ability and potential fit of an investment adviser. Advertisements, word of mouth referrals, and independent research are all ways in which investors acquire information about investment advisers as they search for them. During this search, investors trade off the benefits of finding a better investment adviser (in terms of ability and potential fit) against the costs of searching for and obtaining information about one. If the cost of searching is too high, investors may contract with lower quality investment advisers on average, because they cannot spend the resources to conduct a search that would yield an investment adviser with higher ability or better fit, or they might not be able to evaluate the quality of the investment adviser they have found. Thus, higher search costs can result in inefficiencies because the same expected quality of match requires an investor to incur higher search costs. Similarly, for a fixed amount of spending on a search, an investor is less able to find information about investment advisers, and finds a lower expected quality of match.

Marketing can potentially mitigate inefficiencies associated with the costs of searching for good products or suitable services. To the extent that marketing provides accurate and useful information to investors about investment advisers at little or no cost to investors, marketing can reduce the search costs that investors bear to acquire information and improve the ability of investors to identify high quality investment advisers. Investors have a variety of preferences regarding investment adviser characteristics such as investment strategies or communication styles. Marketing can help communicate information about an investment adviser's ability, and that may aid an investor in selecting an investment adviser who is a good ''fit'' for the investor's preferences.

While marketing by or on behalf of investment advisers may reduce search costs for potential investors, investment advisers' or promoters' incentives may not necessarily be aligned with those of potential investors. Such a misalignment could undercut the potential gains to efficiency. For example, investment advisers have incentives to structure their advertisements to gain potential investors, regardless of whether their advertisements accurately reflect their ability and indicate whether they offer a potential fit with an investor's preferences. One commenter suggested, for instance, that advisers may be incentivized to purchase positive testimonials or endorsements, or otherwise curate content.[842]

In addition, advertisements might make claims that are costly for investors to verify or are inherently unverifiable. For example, evaluating a claim that an investment adviser's strategy generates ''alpha'' or returns in excess of priced risk factors generally requires information about the strategy's returns and permitted holdings, as well as a model that attributes returns to risk factors. While some investors may have ready access to these resources or information, other investors may not. In some cases, an investor may be unable to assess the plausibility of an investment adviser's claims. An investment adviser might also state facts but omit the contextual details that an investor would need to properly evaluate these facts.

Several economic models suggest that the ability to control or influence an investor's access to information can hamper the investor's ability to process information in an unbiased manner, even if the specific facts or information communicated to an investor are not false.[843] For example, this type of control or influence on information can be as explicit as deletion or removal of unfavorable ratings or reviews,[844] or as implicit as a reordering of the ratings or a suggestion of which ratings or reviews to read.[845] Similarly, promoters may overstate the quality of the investment adviser they are promoting or their familiarity with the advisers' services, or hide negative details that would have aided an investor when choosing an investment adviser or private fund, given promoters' financial incentive to recommend the adviser to the investor.

Information Evaluation

There are considerable differences among investors and potential investors in their ability to process and evaluate information communicated by investment advisers. Many investors and prospective investors may lack the financial literacy needed to evaluate and interpret the types of financial information contained in investment adviser advertisements. In 2010, the Dodd-Frank Act required the Commission to study the financial literacy among retail investors, including methods and efforts that could increase financial literacy among investors.[846] The Commission contracted with the Federal Research Division at the Library of Congress to conduct a review of the quantitative studies on the financial literacy of retail investors in the United States.[847] According to the Library of Congress Report, studies show consistently that many American retail investors [848] lack important elements of financial literacy. For example, studies have found that many investors do not understand certain financial concepts, such as compound interest and inflation. Studies have also found that many investors do not understand other key

[842] *See* NASAA Comment Letter.

[843] Luis Rayo and Ilya Segal, *Optimal Information Disclosure,* 118 J. POL. ECON. 949 (2010); Emir Kamenica and Matthew Gentzkow, *Bayesian Persuasion,* 101 a.m. ECON. REV. 2590 (2011); Pak Hung Au and King King Li, *Bayesian Persuasion and Reciprocity: Theory and Experiment,* SSRN (June 5, 2018), *available at https://ssrn.com/abstract=3191203;* Jacob Glazer and Ariel Rubinstein, *On Optimal Rules of Persuasion,* 72 ECONOMETRICA 1715 (2004) (''Glazer'').

[844] *See id.* for Segal and Rayo 2010, Kamenica and Gentzkow 2011, Au Li 2018.

[845] *See* Glazer, *supra* footnote 843.

[846] U.S. Securities and Exchange Commission, *Study Regarding Financial Literacy Among Investors As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Aug. 2012), *available at https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf.* (''Financial Literacy Study'').

[847] *See id.* Although the report does not link American investors specifically to those who would become clients of SEC-registered investment advisers or investors in private funds, we believe that the study may be indicative of the level of financial literacy for prospective investors.

[848] The financial literacy studies in the Library of Congress Report (2011) fall into three categories, depending on the population or special topic under investigation. Most studies survey the general population. For example, the FINRA Investor Education Foundation's 2009 National Financial Capability study, which was included in the Library of Congress Report, consisted of a national sample of 1488 respondents. Other research included in the report focus on particular subgroups, such as women, or specific age groups or minority groups. A third type of study deals specifically with investment fraud. These studies do not differentiate between qualified purchasers, knowledgeable employees, and other investors. Results from studies conducted on general populations may not apply to private fund investors.

financial concepts, such as diversification or the differences between stocks and bonds, and are not fully aware of investment costs and their impact on investment returns.[849] A 2016 FINRA survey found that 56 percent of respondents correctly answered less than half of a set of financial literacy questions, and yet 65 percent of respondents assessed their own knowledge about investing as high (between five and seven on a seven-point scale).[850] Moreover, the general lack of financial literacy among some investors makes it difficult for those investors to evaluate claims about financial services made in advertisements, which increases the risk that such investors are unable to effectively use the information in advertisements to find an investment adviser that has high ability and is a good fit.[851]

*C. Baseline*

1. Market for Investment Advisers for the Advertising Rule

a. Current Regulation

The current rule 206(4)–1 imposes four broadly drawn limitations on the content of advertisements that are ''directly or indirectly'' published, circulated, or distributed by investment advisers. In addition to these specific prohibitions, the current rule prohibits any advertisement that contains any untrue statement of a material fact, or which is otherwise false or misleading. This prohibition operates more generally than the specific prohibitions to address advertisements that do not violate any of the specific prohibition but still may be fraudulent, deceptive, or manipulative and, accordingly, may risk misleading investors.

For purposes of the advertising rule, the Commission currently defines ''advertisement'' to be ''any notice, circular, letter or written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.''

Investment advisers owe a fiduciary duty under the Advisers Act, which is enforceable under the Act's anti-fraud provisions in section 206.[852] Section 206 of the Advisers Act prohibits misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an investment advisory business.[853]

b. Market Practice

In addition to section 206 and rule 206(4)–1, investment advisers have considered staff no-action letters in their advertising practices. For example, the staff has issued no-action letters under rule 206(4)–1(b), stating that, in general, the staff would not view a written communication by an adviser to an existing client or investor about the performance of the securities in the investor's account as an ''offer'' of investment advisory services but instead would view it as part of the adviser's advisory services (unless the context in which the performance or past specific recommendations are provided suggests otherwise), and that the staff would not view communications by an adviser in response to an unsolicited request by an investor, prospective client, or consultant for specified information as an advertisement.[854]

The staff has also stated that it would not recommend enforcement action under section 206(4) and rule 206(4)–1 on issues relating to third-party ratings and testimonials. Specifically, the staff has stated that it would not recommend enforcement action if certain circumstances were present regarding the use of ratings or testimonials, such as: (i) References to independent third-party ratings that are developed by relying significantly on client surveys or clients' experiences more generally;[855] (ii) the use of ''social plug-ins'' such as the ''like'' feature on an investment adviser's social media site;[856] and (iii) references regarding, for example, an adviser's religious affiliation or moral character, trustworthiness, diligence or judgement, in addition to more typical testimonials that reference an adviser's technical competence or performance track record.[857] The Commission has also stated that an investment adviser should consider the application of rule 206(4)–1, including the prohibition on testimonials, before including hyperlinks to third-party websites on its website or in its electronic communications.[858] For example, staff has stated that it would not recommend enforcement action, under certain circumstances, when an adviser provided: (i) Full and partial client lists;[859] and (ii) references to unbiased third-party articles concerning the investment adviser's performance.[860]

Staff no-action letters have also stated that the staff would not recommend enforcement action under rule 206(4)–1 for references to specific investment advice in an advertisement, notwithstanding the rule's general prohibition of the use of past specific recommendations. An adviser that acts consistently with a staff no-action letter may include past specific recommendations in an advertisement

[849] *See* Financial Literacy Study, *supra* footnote 846.

[850] FINRA Investor Education Foundation, Investors in the United States (2016).

[851] Annamaria Lusardi and Olivia S. Mitchell, *The Economic Importance of Financial Literacy: Theory and Evidence,* 52 J. ECON. LITERATURE 5 (2014).

[852] *See* Fiduciary Interpretation, *supra* footnote 88, at 6–7.

[853] *See also* section 17(a) of the Securities Act, section 10(b) of the Exchange Act and rule 10b–5 thereunder, and rule 206(4)–8 under the Advisers Act.

[854] *See* ICAA letter, *supra* footnote 95.

[855] *See* Investment Adviser Association, SEC Staff No-Action Letter (Dec. 2, 2005) (not recommending enforcement action if in determining whether a third-party rating is a testimonial, the adviser considers the criteria used by the third party when formulating the rating and the significance to the ratings formulation of criteria related to client evaluations of the adviser); DALBAR, Inc., SEC Staff No-Action Letter (Mar. 24, 1998) (not recommending enforcement action if an adviser used references to third-party ratings that reflect client experiences, based on certain representations and certain disclosures made, both of which designed to ensure that the rating is developed in a fair and unbiased manner and that disclosures provide investors with sufficient context to make informed decisions).

[856] *See, e.g.,* National Examination Risk Alert, Office of Compliance, Inspections and Examinations (Jan. 4, 2012).

[857] *See* Gallagher and Associates, Ltd., SEC Staff No-Action Letter (July 10, 1995) (where the staff reiterated its view that rule 206(4)–1 prohibits testimonials of any kind concerning the investment adviser); *see also* IM Guidance Update No. 2014–04, at n.12 and accompanying text, in which staff partially withdrew its Gallagher position.

[858] *See* Interpretive Guidance on the Use of Company websites, Release No. IC–28351 (Aug. 1, 2008); *see also* Guidance on the Testimonial Rule and Social Media, IM Guidance Update No. 2014–04, at n.19 and accompanying text.

[859] *See, e.g.,* Cambiar Investors, Inc., SEC Staff No-Action Letter (Aug. 28, 1997) (stating it would not recommend enforcement action when the adviser proposed to use partial client lists that do no more than identify certain clients of the adviser, the Commission staff stated its view that partial client lists would not be testimonials because they do not include statements of a client's experience with, or endorsement of, an investment adviser); *see also* Denver Investment Advisors, Inc., SEC Staff No-Action Letter (July 30, 1993) (stating that partial client lists can be, but are not necessarily, considered false and misleading under 206(4)–1(a)(5)).

[860] *See* New York Investors Group, Inc., SEC Staff No-Action Letter (Sept. 7, 1982) (stating that in the staff's view an unbiased third-party article concerning an adviser's performance is not a testimonial unless the content includes a statement of a customer's experience with or endorsement of the adviser).

provided the recommendations were selected using performance-based or objective, non-performance-based criteria, and in either case, the adviser's practices are consistent with a number of specific representations articulated in the no-action letters.[861] For example, the staff stated that it would not recommend enforcement action if an adviser included in an advertisement a partial list of recommendations provided that, in general, the list: (i) Includes an equal number (at least five) of best and worst-performing holdings; (ii) takes into account consistently the weighting of each holding within the portfolio (or representative account) that contributed to the performance during the measurement period; (iii) is presented consistently from measurement period to measurement period; and (iv) discloses how to obtain the calculation methodology and an analysis showing every included holding's contribution to the portfolio's (or representative account's) overall performance.[862]

The staff has also stated that it would not recommend enforcement action if an adviser includes in an advertisement a partial list of recommendations selected using objective, non-performance-based criteria, provided that, in general: (i) The same selection criteria are used consistently from measurement period to measurement period; (ii) there is no discussion of the profits or losses (realized or unrealized) of any specific securities; and (iii) the adviser maintains certain records, including, for example, records that evidence a complete list of securities recommended by the adviser in the preceding year for the specific investment category covered by the advertisement and the criteria used to select the specific securities listed in the advertisement.[863]

Finally, the Commission has brought enforcement actions related to the presentation of performance results in advertisements. For example, we have alleged in settled enforcement actions that the performance information that certain advisers included in their advertisements failed to disclose all material facts, and thus created unwarranted implications or inferences.[864] Our staff has also expressed its views as to the types of disclosures that would be necessary in order to make the presentation of certain performance information in advertisements not misleading.[865] Our staff has taken the position that the failure to disclose how material market conditions, advisory fee expenses, brokerage commissions, and the reinvestment of dividends affect the performance results would be misleading.[866] Our staff has also considered materially misleading the suggestion of potential profits without disclosure of the possibility of losses.[867]

Our staff has taken the position that prior performance results of accounts managed by a predecessor entity may be used so long as: (i) The person responsible for such results is still the adviser; (ii) the prior account and the present account are similar enough that the performance results would provide relevant information; (iii) all prior accounts that are being managed in a substantially similar fashion to the present account are being factored into the calculation; and (iv) the advertisement includes all relevant disclosures.[868] More recently, our staff has taken the position that, based on certain representations, a surviving investment adviser following an internal restructuring may continue to use the performance track record of a predecessor advisory affiliate to the same extent as if the restructuring had not occurred.[869]

In addition, the Commission believes that many advisers currently prepare and present GIPS standard-compliant performance information, and also that many advisers currently prepare annual performance information for investors. The GIPS standards require advisers to provide certain reports to prospective clients at a specific time, and the standards provide guidance on how advisers can determine whether a potential investor qualifies as a ''prospective client.'' [870]

[861] *See, e.g.,* Scientific Market Analysis, SEC Staff No-Action Letter (Mar. 24, 1976) (the staff would not recommend enforcement action when an investment adviser offers a list of past specific recommendations, provided that the adviser offers to provide the list free of charge); and Kurtz Capital Management, SEC Staff No-Action Letter (Jan. 18, 1988) (the staff would not recommend enforcement action relating to an adviser's distribution of past specific recommendations contained in third-party reports, provided that the adviser sends only bona-fide unbiased articles).

[862] *See* The TCW Letter (not recommending enforcement action based on certain representations such as presenting best and worst-performing holdings on the same page with equal prominence; disclosing that the holdings identified do not represent all of the securities purchased, sold or recommended for the adviser's clients and that past performance does not guarantee future results; and maintaining certain records, including, for example, evidence supporting the selection criteria used and supporting data necessary to demonstrate the calculation of the chart or list's contribution analysis).

[863] *See* Franklin Letter (not recommending enforcement action based on certain representations including that the adviser would disclose in the advertisement that the specific securities identified and described do not represent all of the securities purchased, sold, or recommended for advisory clients, and that the investor not assume that investments in the securities identified and discussed were or will be profitable); *see also supra* footnote 204 (citing Clover Letter, Stalker Letter, and Eberstadt Letter regarding untrue or misleading implications).

[864] *See, e.g.,* In the Matter of Van Kampen Investment Advisory Corp., Release No. IA–1819 (Sept. 8, 1999) (settled order); In the Matter of Seaboard Investment Advisers, Inc., Release No. IA–1431 (Aug. 3, 1994) (settled order).

[865] *See, e.g.,* Clover Letter (not recommending enforcement action provided that certain disclosures about included performance results are made). Regarding mutual funds, our staff has stated that it would not recommend enforcement action if an advertisement included performance data from private accounts that are substantially similar in size and investment strategy to the fund in the fund's prospectus or sales literature if the prospectuses or advertisements: (i) Disclose that the performance results are not those of the fund and should be considered a substitute for such performance; (ii) include the fund's performance results if such results exist and; (iii) disclose all material differences between the institutional accounts and the fund. *See* Nicholas-Applegate Mutual Funds, SEC Staff No-Action Letter (Aug. 6, 1996); GE Funds, SEC Staff No-Action Letter (Feb. 7, 1997); ITT Hartford Mutual Funds, SEC Staff No-Action Letter (Feb. 7, 1997).

[866] *See* Clover Letter (not recommending enforcement action provided that if an adviser compares performance to that of an index, it would disclose all material factors affecting the comparison) *See also* Investment Company Institute, SEC Staff No-Action Letter (May 5, 1988); Association for Investment Management and Research, SEC Staff No-Action Letter (Dec. 18, 1996) (not recommending enforcement action provided that gross performance results may be provided to clients so long as this information is presented on a one-on-one basis or alongside net performance with appropriate disclosure.) *See Also* Securities Industry Association, SEC Staff No-Action Letter (Nov. 27, 1989) (not recommending enforcement action provided that an adviser that advertises historical net performance using a model fee makes certain disclosures).

[867] *See* Clover Letter (stating staff's view that an adviser's advertisement that suggests or makes claims about the potential for profit without also disclosing the possibility of loss may be misleading for purposes of rule 206(4)–1(a)(5)).

[868] *See* Horizon Letter; *see also* Great Lakes Letter (not recommending enforcement action if a successor adviser, composed of less than 100 percent of the predecessor's committee, used the preceding performance information in their calculation when there was a substantial identification of personnel, and noting that without substantial identification of personnel in such a committee, use of the data would be misleading even with appropriate disclosure).

[869] *See* South State Bank Letter (the staff stated that it would not recommend enforcement action on representations including, for example, that the successor adviser would operate in the same manner and under the same brand name as the predecessor adviser).

[870] Global Investment Performance Standards (GIPS) for Firms (2020), Provision 1.A.11. (requiring the firm to ''make every reasonable effort to provide a GIPS Composite Report to all Prospective Clients when they initially become Prospective Clients''), and GIPS Standards Handbook for Firms (Nov. 2020), Discussion of Provision 1.A.11. (stating that ''[i]t is up to the firm to establish policies and procedures for determining who is considered to be a prospective client. These include policies and procedures for determining when an interested party becomes a prospective client. An interested

Regarding the use of model performance results, the staff has taken the position that such results are misleading under rule 206(4)–1(a)(5) if the investment adviser does not make certain disclosures.[871] The Commission has also taken the position that the use of backtested performance data may be misleading unless accompanied by disclosure detailing the inherent limitations of data derived from the retroactive application of a model developed with the benefit of hindsight.[872] Moreover, staff have taken the position that the rule 204–2(a)(16) requirement to keep records of documents necessary to form the basis for performance data provided in advertisements also applies to a successor's use of a predecessor's performance data.[873]

Certain investment advisers that must comply with the final rule are also subject to other regulatory regimes that govern communications and advertisements. For example, investment advisers that are also registered as broker-dealers must comply with FINRA's rules.[874] FINRA rule 2210 governs broker-dealers' communications with the public, including communications with retail and institutional investors, and provides standards for the content, approval, recordkeeping, and filing of communications with FINRA. In particular, FINRA's rule 2210(d)(6) requires any retail communication or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products to prominently disclose: (i) The fact that the testimonial may not be representative of the experiences of other customers; (ii) the fact that the testimonial is no guarantee of future performance or success; and (iii) if more that $100 is paid for the testimonial, the fact that it is a paid testimonial. FINRA rule 2210(d)(6) also requires that if a testimonial in any type of communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. Regulation BI also applies to testimonials or endorsements by promoters that are registered broker-dealers to the extent such testimonials or endorsements are recommendations to retail customers under that regulation. Additionally, communications to investors in private funds are subject to various statutory and regulatory anti-fraud provisions, such as rule 206(4)–8 under the Advisers Act, section 17(a) of the Securities Act, section 10(b) of the Exchange Act and rule 10b–5 thereunder.

c. Data on Investment Advisers

Based on Form ADV filings, as of August 1, 2020, 13,724 investment advisers were registered with the Commission. Of these registered investment advisers (''RIAs''), 11,653 reported that they were ''large advisory firms,'' with regulatory assets under management (''RAUM'') of at least $90 million. 512 reported that they were ''mid-sized advisory firms,'' with RAUM of between $25 million and $100 million, and 1,561 did not report as either, which implies that they have regulatory assets under management of under $25 million.[875]

Form ADV disclosures show $97.05 trillion in RAUM for all RIAs, with an average of $7.07 billion and a median of $350 million. These values show that the distribution of RAUM is skewed, with more RIAs managing assets below the average, than above. The majority of RIAs report that they provide portfolio management services for individuals and small businesses.[876] In aggregate, RIAs have over $97 trillion in RAUM. A substantial percentage of RAUM at investment advisers is held by institutional investors, such as investment companies, pooled investment vehicles, and pension or profit-sharing plans.[877] Based on staff analysis of Form ADV data, 8,134 (59 percent) of RIAs have some portion of their business dedicated to individual clients, including both high net worth and non-high net worth individual clients.[878] In total, firms that have some portion of their business dedicated to high net worth clients have approximately $44 trillion of RAUM,[879] of which $12 trillion is attributable to individual clients, including both non-

party becomes a prospective client when two tests are met. First, the interested party must have expressed interest in a specific composite strategy or strategies. Second, the firm must have determined that the interested party qualifies to invest in the respective composite strategy'').

[871] *Id. See also* In the Matter of LBS Capital Mgmt. Inc., Release No. IA–1644 (July 18, 1997) (settled order) (The Commission brought an enforcement action and stated its view that the marketing materials were misleading and that the Commission looks at ''investment sophistication or acumen'' of the recipients of an advertisement will look into the identity of the intended recipient of advertisement when determining if the results were misleading.).

[872] *See* In the Matter of Market Timing Systems, Inc., *et al.,* Release No. IA–2047 (Aug. 28, 2002) (settled order) (The Commission brought an enforcement action against, among others, a registered investment adviser, asserting that its advertising was misleading because it failed to disclose that performance results advertised were hypothetical and generated by the retroactive application of a model, and in other cases failed to disclose the relevant limitations inherent in hypothetical results and the reasons why actual results would differ); *see also* In the Matter of Leeb Investment Advisers, *et al.,* Release No. IA–1545 (Jan. 16, 1996) (settled order) (The Commission brought an enforcement action against, among others, a registered investment adviser, asserting that advertising mutual fund performance using a market-timing program based on backtested performance was misleading because the program changed during the measurement period and certain trading strategies were not available at the beginning of the measurement period.). *See also* In the Matter of Schield Mgmt. Co., *et al.,* Release No. IA–1872 (May 31, 2000) (settled order) (The Commission brought an enforcement action against, among others, a registered investment adviser, asserting that advertisements presenting backtested results were misleading in violation of section 206(2) and rule 206(4)–1 because, among other things, they failed to disclose or inadequately disclosed that the performance was backtested, and stating that labeling backtested returns ''hypothetical'' did not fully convey the limitations of the performance.).

[873] Rule 204–2(a)(16); *See* Great Lakes Letter (not recommending enforcement action and stating the staff's view that the requirement in rule 204–2(a)(16) applies to a successor's use of a predecessor's performance data.)

[874] Similarly, investment advisers registered with the Commission may also be registered with the National Futures Association and may be subject to additional compliance rules on sales practices and promotional material. *See* NFA Compliance Rules 2–29 and 2–36. *See also* Municipal Securities Rulemaking Board rules G–21(a) and G–40.

[875] From Form ADV: A ''Large advisory firm'' either: (a) Has regulatory assets under management of $100 million or more or (b) has regulatory assets under management of $90 million or more at the time of filing its most recent annual updating amendment and is registered with the SEC; a ''mid-sized advisory firm'' has regulatory assets under management of $25 million or more but less than $100 million and either: (a) Not required to be registered as an adviser with the state securities authority of the state where they maintain their principal office and place of business or (b) not subject to examination by the state securities authority of the state where they maintain their principal office and place of business.

[876] Of the 13,724 RIAs, 8,795 (64 percent) report in Item 5.G.(2) of Form ADV that they provide portfolio management services for individuals and/or small businesses. In addition, there are approximately 17,932 state-registered investment advisers. Approximately 14,851 state-registered investment advisers are retail facing (*see* Item 5.D. of Form ADV).

[877] *See* Table 1.

[878] We use the responses to Items 5(D)(a)(1), 5(D)(a)(3), 5(D)(b)(1), and 5(D)(b)(3) of Part 1A of Form ADV. If at least one of these responses was filled out as greater than 0, the firm is considered as providing business to retail investors. Form ADV Part 1A. Of the 8,134 investment advisers serving individual clients, 356 are also registered as broker-dealers. By high net worth (HNW) individual, we are referring to an individual who is a ''qualified client'' as defined in rule 205–3 under the Advisers Act. Generally, this means a natural person with at least $1,000,000 in assets under the management of an adviser, or whose net worth exceeds $2,100,000 (excluding the value of his or her primary residence). *See* rule 205–3(d)(1); Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Release No. IA–4421 (June 14, 2016).

[879] The aggregate RAUM reported for these investment advisers that have retail investors includes both retail RAUM as well as any institutional RAUM also held at these advisers.

high net worth and high net worth clients. Approximately 7,115 RIAs (52 percent) serve 35.4 million non-high net worth individual clients and have approximately $5.2 trillion in RAUM attributable to the non-high net worth clients, while nearly 7,694 RIAs (56 percent) serve approximately 4.9 million high net worth individual clients with $7.5 trillion in RAUM attributable to the high-net worth clients. In addition, there are 3,517 broker dealers registered with FINRA, 442 identify themselves as dually registered broker-dealers, and 2,394 investment advisers (17%) report an affiliate that is a broker-dealer.

2. Market for Solicitation Activity

a. Current Regulations

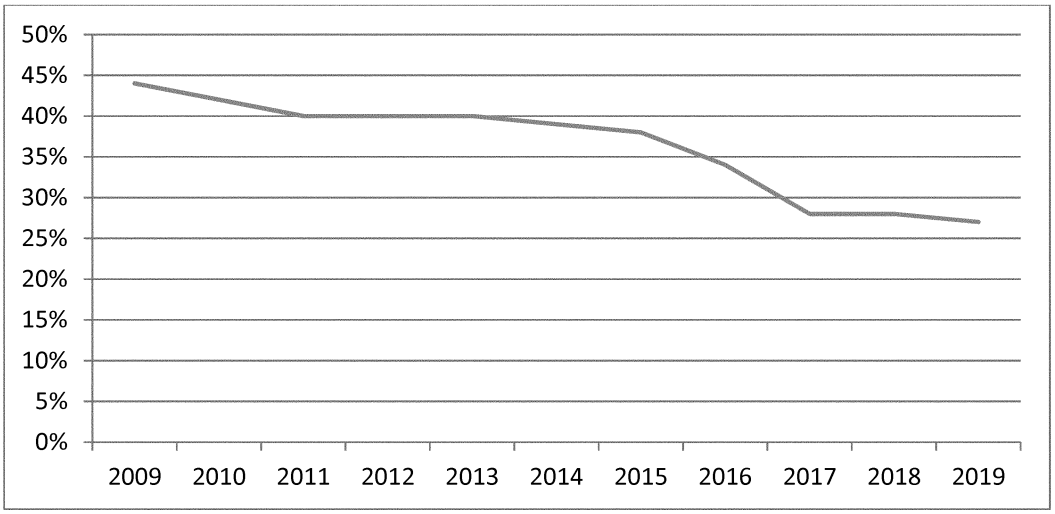
The current solicitation rule makes paying a cash fee for referrals of advisory clients unlawful unless the solicitor and the adviser enter into a written agreement. A solicitor's written agreement with an advisor must also contain an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Advisers Act and the rules thereunder. In addition, among other provisions, it requires the solicitor to provide the client with a current copy of the investment adviser's Form ADV brochure and a separate written solicitor disclosure document at the time of solicitation.[880] The solicitor disclosure must contain information highlighting the solicitor's financial interest in the investor's choice of an investment adviser.[881] Further, advisers are required to have a reasonable belief that solicitors are complying with these contractual requirements.

In addition, the solicitation rule prescribes certain methods of compliance, such as requiring an adviser to receive a signed and dated acknowledgment of receipt of the required disclosures.[882] The solicitation rule also prohibits advisers who have engaged in certain misconduct from acting as solicitors.[883]

b. Data on Solicitors

Given that there is no current registration requirement for solicitors of investment advisers based on their solicitation activity, our view on solicitation practices is through the disclosures made by RIAs in Form ADV. As of August 1, 2020, 27 percent of RIAs reported compensating any person besides an employee for client referrals.[884] As shown in Figure [1], the share of RIAs that reported this type of arrangement has declined since 2009. However, this figure does not capture employees of an investment adviser that are compensated for client referrals, who are solicitors under the solicitation rule. The downward trend in Figure [1] may suggest that the use of solicitors is declining through an overall decline in client referral activity. Alternatively, the data presented in the figure is also consistent with employers shifting their solicitation activities in-house.

Figure [1] Percentage of RIAs that Compensate Persons besides Employees for Client Referrals[885]




c. RIAs to Private Funds

Based on Form ADV data from August 1, 2020, 4,925 RIAs report that they are advisers to private funds, and 54 of these RIAs report that they are a small entity.[886] Of the RIAs that advise private funds, 1,641 RIAs report that they use the services of solicitors that are not their employees or themselves (''related marketers'' in Form ADV). Among the RIAs that hire solicitors, each RIA uses 3 solicitors on average, while the median number of solicitors reported is 1, and the maximum is 67. There are 343 RIAs that indicate that they have at least one related marketer, and 206 of them indicate that they only rely on related marketers. Among RIAs that report using a related marketer, the average number of related marketers reported is 1.5, while the median reported is 1 and the maximum is 24. 1,315 RIAs indicate that they have at least one marketer that is registered with the SEC: The average number of marketers, registered with the SEC as either IAs or BDs, employed by these RIAs is 3.1, while the median number reported is 2 and the maximum is 67. Finally, 570 RIAs indicate that they have at least one non-US marketer: The average number of non-US marketers

[880] *See* rule 206(4)–3(a)(1)(ii).

[881] *See* rule 206(4)–3(b).

[882] *See* rule 206(4)–3(a)(2)(iii)(B).

[883] *See* rule 206(4)–3(a)(1)(ii).

[884] Response to Item 8(h)(1) of Part 1A of Form ADV.

[885] Based on responses to Item 8(h)(1) of Part 1A of Form ADV.

[886] Form ADV Item 5.F.2 and Item 12.A.

reported among these RIAs is 3.1, while the median is 1 and the maximum is 60.[887]

3. RIA Clients

RIAs are required to report their specific number of clients in 13 different categories and a catch-all ''Other'' category.[888] Based on Form ADV data collected as of August 1, 2020, RIAs report having a total of approximately 42 million clients, and $97 trillion in RAUM. Individual investors constitute the majority (95 percent) of the RIA client base. Columns 2 and 3 of Table 1 present the breakdown of the RIA client base, and column 4 shows the total RAUM from each investor category as of August 2020.

Non-high net worth (HNW) individuals comprise the largest group of advisory clients by client number—83 percent of total clients. The number of HNW individuals is only 12 percent of advisory clients, but RAUM from HNW individuals makes up almost 8 percent of the industry-wide RAUM ($97 trillion) in 2018, while RAUM from non-HNW individuals accounts makes up about 5.4 percent.

TABLE 1—INVESTOR CATEGORIES BY CLIENTS, RAUM, AND ADVISERS[889]

| Investor categories | Clients | Clients (%) | RAUM (billions) | RAUM (%) | Advisers |
|---|---|---|---|---|---|
| Non-HNW individuals | 35,433,736 | 83.451 | $5,228.92 | 5.39 | 7,115 |
| HNW individuals | 4,916,781 | 11.580 | 7,465.29 | 7.69 | 7,694 |
| Other investment advisers | 863,785 | 2.034 | 1,250.71 | 1.29 | 548 |
| Corporations or other businesses | 321,471 | 0.757 | 2,674.23 | 2.76 | 3,320 |
| Pension and profit sharing plans | 386,897 | 0.911 | 6,504.54 | 6.70 | 3,933 |
| Other | 279,025 | 0.657 | 970.50 | 1.00 | 951 |
| Pooled Investment Vehicles (PIVs)—Other | 83,942 | 0.198 | 25,883.53 | 26.68 | 5,354 |
| State/municipal entities | 24,761 | 0.058 | 3,565.01 | 3.67 | 970 |
| Charities | 99,968 | 0.235 | 1,189.66 | 1.23 | 3,302 |
| Banking or thrift institutions | 9,833 | 0.023 | 992.93 | 1.02 | 281 |
| Insurance companies | 12,070 | 0.028 | 6,257.69 | 6.45 | 711 |
| PIVs—Investment companies | 26,520 | 0.062 | 33,362.03 | 34.39 | 1,583 |
| Sovereign Wealth Funds and Foreign official institutions | 1,643 | 0.004 | 1,544.11 | 1.59 | 213 |
| PIVs—Business development companies | 159 | 0.0004 | 132.15 | 0.14 | 87 |

A number of surveys show that individuals[890] predominantly find their current financial firm or financial professional from personal referrals by family, friends, or colleagues, rather than through advertisements.[891] For instance, a 2008 study conducted by RAND reported that 46 percent of survey respondents indicated that they located a financial professional from personal referral, although this percentage varied depending on the type of service provided (*e.g.,* only 35 percent of survey participants used personal referrals for brokerage services). After personal referrals, RAND 2008 survey participants ranked professional referrals (31 percent), print advertisements (4 percent), direct mailings (3 percent), online advertisements (2 percent), and television advertisements (1 percent), as their source of locating individual professionals. The RAND 2008 study separately inquired about locating a financial firm,[892] in which a smaller group of respondents reported selecting a financial firm (of any type) based on: Referral from family or friends (29 percent), professional referral (18 percent), print advertisement (11 percent), online advertisements (8 percent), television advertisements (6 percent), direct mailings (2 percent), with a general ''other'' category (36 percent).

The Commission's 2012 Financial Literacy Study provides similar responses, although it allowed survey respondents to identify multiple sources from which they obtained information that facilitated the selection of the current financial firm or financial professional.[893] In the 2012 Financial Literacy Study,[894] 51 percent of survey participants received a referral from family, friends, or colleagues. Other sources of information or referrals came from: Referral from another financial professional (23 percent), online search (14 percent), attendance at a financial professional-hosted investment seminar (13 percent), advertisement (*e.g.,* television or newspaper) (11.5 percent), other (8 percent), while approximately 4 percent did not know or could not remember how they selected their financial firm or financial professional. Twenty-five percent of survey respondents indicated that the ''name or reputation of the financial firm or financial professional'' affected the selection decision.

*D. Costs and Benefits of the Final Rule and Form Amendments*

The Commission is adopting a final combined marketing rule by amending rule 206(4)–1, which is related to advertisements, and eliminating rule 206(4)–3, which deals with solicitation. The final rule changes the definition of advertisement and generally expands the set of permitted advertisements. It includes general prohibitions of certain advertising practices, and will (i) impose requirements of or restrictions on investment adviser performance in advertisements, and (ii) permit investment advisers to use certain features in an advertisement, such as testimonials, endorsements, and third-party ratings, subject to certain conditions, such as disclosing

[887] Data on solicitors (marketers) hired by RIAs to private funds are collected from Form ADV Section 7.B(1) (28).

[888] Form ADV Item 5.D. of Part 1A.

[889] Data taken from Form ADV data.

[890] The surveys generally use ''retail investors'' to refer to individuals that invest for their own personal accounts.

[891] *See* Angela A. Hung, *et al., Investor and Industry Perspectives on Investment Advisers and Broker-Dealers,* RAND Institute for Civil Justice Technical Report (2008), *available at https://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR556.pdf* (''RAND 2008''), which discusses a shift from transaction-based to fee-based brokerage accounts prior to certain regulatory changes at the time; *see also* Financial Literacy Study, *supra* footnote 846.

[892] Only one-third of the survey respondents that responded to ''method to locate individual professionals'' also provided information regarding locating the financial firm.

[893] *See* Financial Literacy Study, *supra* footnote 846.

[894] The data used in the 917 Financial Literacy Study comes from the Siegel & Gale, Investor Research Report (July 26, 2012), *available at https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part3.pdf.*

information that would help investors evaluate the advertisement.

The marketing rule, among other things, also applies disclosure, oversight, and disqualification requirements to compensated testimonials or endorsements, including those directed at prospective investors in private funds. The Commission is also adopting amendments to Form ADV that are designed to provide additional information regarding advisers' marketing practices and amendments to the Advisers Act books and records rule to correspond to the features of the marketing rule. The final rule reflects market developments since 1961 and 1979, when rules 206(4)–1 and 206(4)–3, respectively, were adopted, as well as practices addressed in staff no-action letters. These market developments include advances in communication technology and marketing practices that did not exist at the time the rules were adopted and may fall outside of the scope of the current rules. As a result, the current rule is less effective at mitigating some information and search problems investors face when searching for investment advisers than when it was initially written.[895]

Advertisements falling in the two categories of communications defined as advertisements in the final rule are currently subject to different regulatory baselines and market practices. We discuss the costs and benefits of specific provisions of the final rule, taking care to note whether a cost or benefit applies to the first or the second prong of advertisement, or both.

1. Quantitative Estimates of Costs and Benefits

The economic effects of the final rule are generally difficult to quantify for several reasons. First, there is little to no direct data suggesting how investment advisers and promoters might alter their marketing practices as a result of the final rule or mitigate the compliance burdens related to the final rule, and commenters did not provide any. It is difficult to quantify the impact that specific provisions of the final rule will have on adviser behavior because the final rule may influence adviser behavior in opposing directions. For example, it might motivate advisers to provide more information to potential investors that helps such investors more accurately evaluate those advisers' abilities and potential fit with such investors' preferences. Alternatively, the rule may introduce compliance burdens that disincentivize the creation of communications that fall within the definition of advertisement. This could reduce the amount of information that advisers provide to potential investors through advertisements.

Second, it is difficult to quantify the impact that the specific provisions of the final rule will have on investor behavior because the final rule may influence investor behavior in opposing directions. Disclosures might provide additional context for investors to make better decisions when choosing investment advisers; alternatively, they might not be used by investors, or might make them overconfident when making decisions.[896] Without knowing the magnitude of these opposing effects, it is not possible to quantify the effects of specific provisions of the final rule.

Finally, it is difficult to quantify the extent to which certain changes in adviser, promoter, and investor behavior enhance or diminish the welfare of specific market participants. For example, if investors increased the amount of advisers' RAUM as a result of the final rule, it is not clear to what extent investor welfare would have improved, without knowing the extent to which the final rule also affected the quality of investment advisers with whom investors chose to invest. Further, if RAUM increased as advisers increased their marketing and incurred higher marketing expenditures, a portion of these expenditures could be transferred to investors through fees offsetting, in part, any increase in investor welfare.

Some commenters directly addressed the cost estimates in the proposal.[897] Two of these commenters stated that the proposal underestimated the number of advertisements that investment advisers use under the current rule.[898] One commenter stated that heavy advertisers would be expected to create new advertisements 50 times per year, and update their advertisements 250 times per year.[899] One commenter broadly criticized the cost estimates as too low, and also specifically criticized the proposal's estimates of the number of advertisements that advisers would distribute.[900] In response to commenters, we have adjusted our estimates of the annual number of advertisements that investment advisers will create.[901]

One commenter made several critiques of the cost estimates.[902] The commenter separated its expected costs into three categories—implementation costs, ongoing costs, and management resource drain, arguing that the proposal failed to recognize whole types of costs. The commenter broadly criticized many of the quantitative estimates in the proposal as significantly underestimating the cost burden on investment advisers. The commenter specifically criticized the cost estimates for third-party rankings, hypothetical performance, and Form ADV changes, but did not provide additional estimates or data to use. Many of the quantitative estimates in the proposal were for the Paperwork Reduction Act (''PRA''), which are a subset of the total economic costs of the rule. Many of these total costs are difficult to quantify, for reasons mentioned above. However, given the commenter's feedback on the categories and types of costs that the rules will impose on investment advisers, we have updated our analysis of the costs of the rule, as well as our PRA-related quantitative cost estimates.

In the following sections, we have quantified some elements of the overall cost of the general anti-fraud prohibitions as part of the Commission's Paperwork Reduction Act obligations. These are costs associated with the collection of information that are generated by the final rule, but do not represent the entire cost of each provision.

2. Definition of Advertisement

The final rule's definition of advertisement contains two prongs. The first prong generally captures traditional advertising, and changes the scope of communications that fall within the scope of the final rule. The first prong includes, among other communications, communications made to investors and potential investors in private funds advised by the adviser. The second prong generally includes the cash-compensated solicitation activity that occurs currently under rule 206(4)–3. In addition, the second prong will include non-cash compensated communications made by promoters and compensated solicitation activity for private fund investors.

This definition of ''advertisement'' determines the scope of communications affected by the final rule, which determines, in part, the costs and benefits of the regulatory program set forth by the other components of the final rule (the ''programmatic effects''). For example, if

[895] *See infra* section III.B.

[896] *See infra* section III.B.

[897] *See* Fidelity, IAA, MFA/AIMA Comment Letters.

[898] *See* Fidelity, IAA Comment Letters.

[899] *See* Fidelity Comment Letter

[900] *See* IAA Letter Comment Letter.

[901] *See infra* section IV.B.

[902] *See* MFA/AIMA Comment Letter.

the definition of ''advertisement'' is not sufficiently broad and excludes communications that could serve as a substitute for advertisements and that raise similar investor protection concerns, investment advisers might use these alternative communications to avoid the costs associated with complying with the final rule. This would reduce the effect of changes to the substantive provisions to the advertising rule that would regulate advertisements. Conversely, if the scope of communications captured by the final rule is too broad and captures communications that do not aim to attract clients, the amendments may impose costs on investment advisers while yielding insubstantial benefits.

In response to the final rule's definition of advertisement, investment advisers and promoters might modify their communication strategies in an effort to reduce the amount of communication that could be deemed to fall within the definition of ''advertisement.'' These strategic responses could, in turn, impose costs on some clients or investors, to the extent that they currently rely on communications by investment advisers or promoters that are advertisements to inform their decisions.[903] If investment advisers or promoters respond by reducing the amount of such communications, both prospective and existing investors may need to search more intensively for information about investment advisers than they currently do or, alternatively, base their choice of financial professional on less information. This could result, for example, in inefficiencies to the extent that an existing client of an investment adviser is unaware of the breadth of services the investment adviser provided and incurs costs to open a new account with another investment adviser to obtain certain services. Similarly, a prospective client that receives less information from investment advisers and promoters might ultimately choose an investment adviser that is a poorer match for them or might be discouraged from seeking investment advice. These potential costs to investors depend on the extent to which the final rules cause investment advisers and promoters to reduce their advertisements.

As discussed above, some of the affected parties whose communications will be newly defined as advertisements under the final rule may also be registered broker-dealers whose communications are subject to other regulatory regimes that govern communications and advertisements, including those under FINRA rules and, in some cases, Regulation BI. As a result, these parties will incur new compliance obligations with respect to communications subject to the final rule, and may incur incremental costs similar to other parties whose communications are also newly-subject to the rule. In general, however, to the extent that these parties may leverage existing compliance methods similar to those that they currently use, the programmatic effects of including these communications within the final rule's definition of advertisement may be mitigated.

Below, we address the costs and benefits associated with determining the scope of communications affected by the final rule through specific elements of the final rule's definition of an advertisement.[904] We address the costs and benefits of the two prongs of the definition separately.

a. Communications Other Than Compensated Testimonials or Endorsements

The first prong includes within the definition of an advertisement any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance information, and that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser. It also excludes (a) extemporaneous, live, oral communications, regardless of whether they are broadcast; (b) any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; and (c) a communication that includes hypothetical performance that is provided: (i) In response to an unsolicited investor request or (ii) to a private fund investor in a one-on-one communication.

i. Any Direct or Indirect Communication an Investment Adviser Makes

The first prong includes communications directly or indirectly made by the adviser, regardless of whether they are prepared and disseminated by the adviser or by a third party. Prong one includes communications disseminated by an adviser that incorporate statements or content prepared by a third party, such as positive reviews from clients selectively picked by an adviser to be posted or attributed, materials an adviser helps draft to be distributed by third-party promoters, and endorsements organized by an adviser on social media. This provision (the phrase ''directly or indirectly'') does not differ from the current rule, and we therefore do not anticipate any significant costs or benefits to be generated directly by this provision.

The first prong defines advertisements as communications made to more than one person, or to any number of persons if the communication includes hypothetical performance information that is not provided in response to an unsolicited investor request or to a private fund investor in a one-on-one communication. Because the definition's limitation to communications to more than one person does not differ from the current rule, we generally do not anticipate any significant costs or benefits to be generated directly by this part of the rule.[905] However, the inclusion of one-on-one communications with hypothetical performance information (except for hypothetical performance information that is provided in response to an unsolicited investor request or to a private fund investor) in the definition of advertisement represents a change from the current rule.[906] We expect that

[903] To the extent that broker-dealers and other third parties disseminate communications that are defined as advertisements under the final rule, including with respect to private funds, they may incur compliance costs associated with the final rule. These compliance obligations generally will be separate from any compliance obligations incurred under the requirements of the Exchange Act, the rules promulgated thereunder, and FINRA rules.

[904] The specific costs and benefits of the rule's changes to the substantive prohibitions and conditions applicable to advertisements are discussed in later sections. *See infra* section II.D.3–8.

[905] The final rule does contain a related compliance and recordkeeping requirement that requires investment advisers to retain records of communications addressed to more than one person, which we discuss in further detail later. *See infra* section III.D.8.

[906] The rule excludes from the first prong of the advertisement definition a communication that includes hypothetical performance that is provided in response to an unsolicited investor request for such information or to a private fund investor in a one-on-one communication. *See* rule 206(4)–1(e)(1)(i)(C). Because the current advertising rule excludes one-on-one communications from the definition of advertisement, we do not anticipate

Continued

this change could produce costs and benefits with respect to these one-on-one communications that are similar to those described below that are associated with prong one's inclusion of communications that offer investment advisory services to prospective investors, including for review and monitoring of communications.

While the current definition of advertisement includes communications directly or indirectly made by the adviser, it only explicitly covers written, radio, or television advertisements. As a result, the first prong of the definition could cover additional communications with prospective clients as compared to the current definition. This change will further extend the investor protection and benefits of the final rule.[907] Investment advisers will also incur costs directly as a result of this change, which may include dedicating personnel time, or conducting training for personnel to determine the extent to which the substantive content of one of these newly-covered types of communication subjects it to the final rule.[908]

These costs may be mitigated to the extent that investment advisers may be able to leverage existing oversight methods similar to those that they currently use, including those used by dual-registrant advisers or promoters who are also broker-dealers in connection with compliance with FINRA's rules,[909] for example, in communicating with prospective clients through intermediaries. Additionally, investment advisers might reduce certain types of communications to avoid having to bear these costs of complying with the final rule, which may mitigate the benefits of additional information in advertisements available to investors.[910]

ii. Offers the Investment Adviser's Investment Advisory Services With Regard to Securities to Prospective Clients or Investors in a Private Fund Advised by the Investment Adviser

Prong one also includes communications that offer the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser. This prong will expressly apply to communications to prospective investors in private funds. By including communications that offer the adviser's investment advisory services with regard to securities to private fund investors, the final rule will provide more specificity (and certainty) regarding what we believe to be untrue or misleading statements that advisers must avoid in their advertisements, which may reduce compliance costs for some investment advisers. On the other hand, to the extent that an adviser's current practices differ from the final rule, an investment adviser may incur some increased costs to review and monitor its communications with potential investors for general compliance purposes. An investment adviser may respond by reducing the number of these advertisements or the amount of information it distributes to potential investors. This could, in turn, reduce the amount of information available to potential investors in these private funds. An investment adviser to a private fund also may respond by not seeking potential investors likely to have less money to invest in the private fund, reducing investment opportunities for these investors.

iii. Offers New Investment Advisory Services With Regard to Securities to Current Clients or Investors in a Private Fund Advised by the Investment Adviser

The final definition of advertisement under the first prong also includes communications that offer new investment advisory services with regard to securities to existing clients or investors in a private fund advised by the investment adviser. Investment advisers will incur costs similar to those described above that are associated with prong one's inclusion of communications that offer investment advisory services to prospective investors, including for review and monitoring of communications. However, to the extent that an adviser uses a single set of communications aimed at both new and existing clients, these costs may be mitigated because the adviser may incur only a single set of costs for both prospective and existing investors.

b. Compensated Testimonials and Endorsements

The second prong of the final definition of advertisement includes testimonials or endorsements for which compensation is provided, excluding any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication. The baseline for these advertisements is generally shaped by the current solicitation rule, which obligates advisers to enter into written agreements with solicitors to require them to act in a manner consistent with the Advisers Act and rules, including the current advertising rule.[911] Under the current solicitation rule, investment advisers must have a reasonable belief that solicitors are complying with this written agreement. Furthermore, solicitations of private fund investors are not subject to the current solicitation rule.

Prong two will scope in non-cash compensated testimonials and endorsements and compensated testimonials and endorsements to private fund investors, including communications from solicitors for impersonal advisory services, and, as a result, will extend the investor protection benefits of the final rule to the investors who receive these communications. Similarly, it will impose certain costs on advisers and persons who are solicitors under the current rule, including costs associated with oversight of these communications not currently subject to the rule, including endorsements to private fund investors.[912] Advisers may respond by reducing the number of these advertisements or the amount of information they distribute to potential investors. Similarly, advisers to private funds also may respond by not seeking potential investors likely to have less money to invest in the private fund, reducing investment opportunities for these investors.

Prong two does not contain the same exclusion for one-on-one communications as prong one. Oversight of one-on-one communications will likely involve greater costs for investment advisers compared to those addressed to more than one person because one-on-one communications have the potential for more variety and volume in their content. However, one-on-one solicitations are subject to the current solicitation rule. Therefore, there will likely be incrementally greater costs for advisers overseeing promoters under the final rule. Of these incremental costs,

that this exclusion will result in significant costs or cost savings for advisers.

[907] *See, e.g., infra* sections III.D.3; III.D.4; III.D.5.

[908] *See supra* section III.D.1 and footnote 902.

[909] *See supra* section II.A.2.b.i.

[910] The final rule contains a related compliance and recordkeeping requirement that requires investment advisers to retain records of communications addressed to more than one person, which we discuss in further detail later. *See infra* section III.D.8.

[911] Under the cash solicitation rule, certain affiliated advisers are not required to satisfy all of the elements of the written agreement. See rule 206(4)–3(a)(2)(ii) and (iii).

[912] *See infra* sections III.D.3–8 for discussion of the direct costs and benefits of the requirements of the rule.

the increase in costs is attributable less to the inclusion of one-on-one communications and more to the expansion in compensation type (from cash to non-cash) and the expanded types of persons who would be promoters under the final rule as compared to solicitors under the current solicitation rule.

Extending the scope of the rule to communications made by solicitors who receive non-cash compensation may have further benefits for investors. Because solicitations provided in connection with non-cash compensation that solicitors might receive generate nearly identical conflicts of interest to solicitations provided in connection with cash compensation, prong two may reduce the risk that investors might be unaware of such conflicts for a larger set of communications. For example, many advisers use brokerage—a form of non-cash compensation—to reward brokers that refer them to investors. This practice presents advisers with conflicts of interest as the brokers' interests may not be aligned with investors' interests. Including non-cash compensated testimonials and endorsements in the definition of advertisement would also give cash and non-cash compensation more equal regulatory treatment for these purposes, which will enhance competition between promoters that accept non-cash compensation and those that accept cash compensation. Additionally, to the extent that investment advisers currently direct order flow to broker-dealers with lower execution quality, the final rule's inclusion of non-cash compensation into the definition of advertisement could potentially affect quality of execution. If the final rule's requirements for non-cash compensation impose regulatory burdens that reduce the usage of directed brokerage towards brokers with lower quality of execution, these investment advisers might instead choose brokers with higher execution quality, which could result in a benefit for their investors.

The extent of additional benefits and costs attributed to prong two of the definition will be mitigated to the extent that solicitors previously entered into written agreements obliging them to act in a manner consistent with the Advisers Act and its rules, including the current advertising rule. As a result of such agreements, the additional costs and benefits of the final rule's substantive provisions for these solicitors will generally be limited to changes in the programmatic effects of the final rule as compared to the current advertising rule. Any solicitors making communications subject to the final rule who did not previously enter into such a contract will, however, incur these costs fully and also incur costs associated with the creation of written agreements. The benefits and costs attributed to prong two may also be mitigated to the extent that advisers and promoters were previously complying with the current solicitation rule with respect to endorsements to private fund investors and to the extent that some aspects of the final rule overlap with the scope of rule 206(4)–8 under the Advisers Act, section 17(a) of the Securities Act, or section 10(b) and rule 10b–5 under the Exchange Act.

c. Exclusions From the Definition of Advertisement

The first prong of the definition of an advertisement excludes extemporaneous, live, oral communications. The current rule does not, however, include these communications unless they are broadcast by radio or television. As a result, to the extent that some extemporaneous, live, oral communications were previously transmitted by radio or television or otherwise subject to the current advertising rule, the first prong of the definition could cover fewer of these communications with investors than the current definition. While this change could reduce investor protection and benefits of the final rule to investors with respect to these communications, it may also reduce the costs associated with the fact that advisers might avoid making any extemporaneous communications because of the difficulties in ensuring that they comply with the requirements of the rule.

Both prongs of the definition of advertisement contain an exception for any statutorily or regulatory required notice, filing, or communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication. These exceptions are designed to reduce the likelihood that the final rule imposes costs or burdens on communications unrelated to advertising, or adds costs or burdens for communications already regulated by the Commission. The current advertising rule does not exclude statutory or regulatory notices, so the final rule will entail a reduction in costs for investment advisers to the extent they currently bear costs to comply with the advertising rule for their statutory or regulatory notices. Advisers will, however, continue to incur potential liability for these statements under applicable anti-fraud provisions.

3. General Prohibitions

The final rule generally prohibits certain marketing practices as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts. In general, we anticipate that the introduction of these general prohibitions will generate new interpretive questions regarding whether a particular communication is prohibited, which will impose compliance costs on investment advisers, including costs of legal advice and managerial resources, on an initial and ongoing basis. In addition, promoters for investment advisers will bear similar compliance costs, such as for legal advice and managerial resources.[913]

Below, we analyze the costs and benefits of these general prohibitions.[914] The baseline for analyzing different types of advertisements may, however, be different. While advertisements as defined under the final rule will be subject to a single set of prohibitions and requirements, under the baseline, the same advertisements as defined by the final rule may be subject to different regulatory requirements. For example, solicitors that receive cash compensation are currently subject to the solicitation rule and, because they have entered into written agreements that oblige them to act in a manner consistent with the Advisers Act and its rules, the advertising rule. However, some communications that meet the definition of an advertisement do not currently fall under the solicitation rule or the advertising rule. For example, non-cash compensated promoters, and promoters for an adviser's impersonal advisory services currently are not subject to the requirements of rule 206(4)–3, while under the final rule certain of their communications would be defined as advertisements and subject to the general prohibitions. Further, communications to prospective and current investors in private funds are currently subject to rule 206(4)–8, section 17(a) of the Securities Act,

[913] *See supra* section III.D.1 and footnote 902.

[914] In addition to the general prohibitions discussed below, the final rule specifically prohibits (i) any untrue statement of a material fact, or omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading and (ii) otherwise materially misleading statements. These provisions prohibit statements that would be prohibited by the current advertising rule and rule 206(4)–8, for example, and as a result, we do not believe that these provisions will generate significant costs or benefits.

section 10(b) of the Exchange Act, and rule 10b–5 thereunder.

We have quantified a subset of the costs associated with the general anti-fraud prohibition, specifically, the burden of information collection costs estimated for the purposes of the Paperwork Reduction Act. The general anti-fraud prohibitions do not create any collection of information burdens, with one exception. The prohibition on unsubstantiated statements of material fact might cause investment advisers to create records to substantiate statements either contemporaneously or after the fact, and we estimate the costs of this collection. We estimate these costs to be $657 for each investment adviser per year, for a total cost of $9,016,668 per year.[915]

a. Unsubstantiated Material Statements of Fact

The final rule contains a prohibition on material statements of fact that an investment adviser does not have a reasonable basis for believing that it will be able to provide substantiation on demand by the Commission. Investment advisers would need to gather materials needed to substantiate the material statements of fact made in advertisements only if requested by the Commission. Currently, there is no express prohibition of making statements in advertisements that the adviser does not have a reasonable basis for believing it will be able to substantiate on demand, in the current rule or the general anti-fraud provisions.

This prohibition will benefit current and prospective investors by reducing the likelihood that advisers will make material statements of fact in advertisements that are not able to be substantiated, a practice which could potentially mislead investors. Additionally, the prohibition could incentivize investment advisers to invest additional resources to substantiate material statements of fact. Some commenters noted that a substantiation requirement would be burdensome,[916] and we recognize that there will be costs associated with this requirement for advisers. We note, however, that commenters raised these concerns about the proposed requirement, which was not limited to material statements of *fact.* Nonetheless, there may, for example, be costs to determine whether a statement is a material statement of fact, whether the adviser has a reasonable basis to believe that it will be able to substantiate the statement upon demand, or how statements or facts would be substantiated on demand. These costs could include, among other things, personnel time for review and documentation, as well as direct costs when demanded by the Commission, which might entail personnel time to prepare materials for the Commission. Further, while an adviser may choose to substantiate the material fact after it has received the demand from the Commission, we recognize that some advisers may choose to create such records contemporaneously with the advertisement for sake of efficiency or to manage their compliance risk, which will cause them to incur compliance costs.

Compliance costs may, however, be mitigated to the extent that advisers currently retain records that effectively substantiate performance advertising[917] and, upon inquiry by the staff or the Commission, demonstrate that the adviser's statements are not untrue statements of material fact, consistent with the Advisers Act and its rules. These costs may be further mitigated to the extent that advisers believe there are external sources that support the material statements of fact they make in advertisements, which they also believe will be available at the time of any subsequent demand by Commission staff. We expect that this may be the case for some of the material facts, and costs may be further mitigated to the extent that advisers do not prepare this support in advance of such demand.

We recognize that the costs associated with substantiation might induce some investment advisers to avoid making material statements of fact that are too costly to substantiate. This could yield benefits for clients or investors, to the extent that any such advertisement not made has an increased risk of being misleading. These decisions could, however, have costs to clients or investors to the extent that they would receive less information about an adviser, and costs to advisers to the extent that they forgo some communications to clients or investors.

b. Untrue or Misleading Implications or Inferences

The final rule contains a prohibition on information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser. There is no provision in the current advertising rule that expressly prohibits this type of information, though in staff no-action letters, the staff has stated its view that in some circumstances an advertisement may be false or misleading if it implies, or a reader would infer from it, something false.[918] Further, the current advertising rule and rule 206(4)–8 each generally prohibit misleading statements.

To the extent that advisers or promoters do not already omit information that would reasonably be likely to cause an untrue or misleading implication or inference, this prohibition to be drawn concerning a material fact relating to the investment adviser will benefit current and prospective investors by removing this type of information from advertisements, which has the potential to mislead investors and impair their ability to find an investment adviser. In addition, because this prohibition will generally require the adviser to consider the context and totality of information presented such that it would not reasonably be likely to cause any misleading implication or inference to be drawn concerning a material fact relating to the investment adviser, the prohibition will entail compliance costs to investment advisers and promoters, including those related to interpretation of the application of the new rule. We expect, however, that the costs and benefits of the prohibition will likely be mitigated, to the extent that advisers and promoters currently exclude from their communications this type of information.

c. Failure To Provide Fair and Balanced Treatment of Material Risks or Other Limitations

The final rule contains a prohibition on advertisements which discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any associated material risks or other limitations associated with the potential benefits. Currently, while Form ADV requires disclosure of certain material risks, there is no provision in the current advertising rule, rule 206(4)–8, the other rules under the Advisers Act, or in the Advisers Act itself that explicitly requires such treatment.

This prohibition will benefit current and prospective investors by requiring material risks and other limitations to be presented in a fair and balanced manner included in advertisements. This could provide such investors with additional, higher quality, information about

[915] *See infra* section IV.B.1.

[916] *See, e.g.,* MFA/AIMA Comment Letter I; FPA Comment Letter; NVCA Comment Letter; Fried Frank Comment Letter.

[917] *See supra* footnote 221.

[918] *See supra* section II.B.2; III.C.1.b.

investment advisers and additional context for the claims they make in their advertisements. This information would allow investors to find better matches with investment advisers, and would reduce the costs associated with the search for investment advisers.

This prohibition, however, may cause advisers and promoters to incur costs associated with changes to compliance processes, and investment advisers might incur costs to adjust their advertising materials to discuss material risks and limitations in a fair and balanced manner, including changes in formatting and tailoring disclosures based on the form of the communication. To the extent that investment advisers already prepare similar disclosure in existing communications with investors or in connection with the preparation of Form ADV Part 2, we expect the costs of compliance to be mitigated.

One commenter expressed concern that this prohibition would expand the amount of required disclosures and overwhelmingly lengthen advertisements.[919] We recognize that this prohibition will have costs associated with changes to the formatting of advertisements associated with the additional information, including with respect to communications made to prospective and current investors in private funds advised by the investment adviser. Further, we recognize that the associated costs might induce some investment advisers and promoters to avoid making some types of claims to the extent that they will require extensive discussion of the associated material risks or other limitations. This could have costs to investors to the extent that they would receive less information about an adviser, and costs to advisers to the extent that they forgo some communications to investors. This could, however, yield benefits for investors, to the extent that any such advertisement not made has an increased risk of being misleading.

d. Anti-Cherry Picking Provisions: References to Specific Investment Advice and Presentation of Performance Results

The final rule contains two other provisions designed to address concerns about investment advisers presenting potentially cherry-picked information to investors in advertisements.

The first prohibits reference to specific investment advice where such advice is not presented in a manner that is fair and balanced. Currently, there is a *per se* prohibition against past specific recommendations in the advertising rule, though the current rule allows reference to past specific recommendations in an advertisement where the advertisement offers to furnish a list of all recommendations made by such investment adviser in the last year. Further, the staff has indicated that it would not recommend enforcement action under rule 206(4)–1 under certain circumstances.[920]

The first provision replaces the current advertising rule's *per se* prohibition of past specific recommendations with a principles-based prohibition on presentations of specific investment advice that is not presented in a manner that is ''fair and balanced.'' We believe that this change will provide benefits to advisers and promoters by providing additional clarity on which market practices are prohibited. Further, it will provide benefits to current and prospective investors related to potentially expanding the circumstances under which advisers may provide information regarding past specific advice to investors. In addition, investors may be able to better evaluate presentations of past or current specific advice because of the rule's requirement for fair and balanced presentation. This shift in approach might impose costs on investment advisers and promoters related to compliance, who will need to devote personnel time to evaluate whether a potential presentation of specific investment advice is fair and balanced.[921] These compliance costs may be mitigated to the extent that advisers currently present past or current specific recommendations in a ''fair and balanced'' manner. Further, these costs may also be mitigated to the extent that an adviser currently complies with FINRA's rule 2210, which requires that broker communications be ''fair and balanced.'' [922]

The second anti-cherry-picking provision prohibits presentations of performance results, or performance time periods that are not presented in a fair and balanced manner. Currently, there is no express provision in the advertising rule requiring presentation of performance results in this manner, though the staff has stated views regarding certain circumstances in which the staff may view a presentation of performance results as misleading, including, for example, where an adviser failed to disclose how material market conditions, advisory fee expenses, brokerage commissions, and reinvestment of dividends affect the performance results.[923]

This provision may yield benefits to current and prospective investors by reducing the likelihood that they are misled by advertisements, and requiring the provision of information to evaluate an investment adviser that is presented in a fair and balanced manner. We recognize, however, that the standard in this rule will impose costs on advisers and promoters. Two commenters, for example, indicated that the ''fair and balanced'' standard may be difficult in application.[924] We recognize that this ''fair and balanced'' component for the second provision also represents a shift towards a principles-based approach, which could impose compliance costs on investment advisers, who might need to devote personnel time to update compliance processes.[925]

These costs and benefits may be mitigated, however, to the extent that advisers already ensure that their advertisements are fair and balanced in presentation of performance results in order to ensure that they are not misleading under the current advertising rule or other applicable anti-fraud provisions.

These costs might, however, induce some investment advisers to avoid presenting performance results altogether. This could have costs to investors to the extent that they would receive less information about an adviser's performance, and may make finding an investment adviser more difficult or costly for some investors. Additionally, this could impose costs on advisers to the extent that they forgo some communications to investors. This reduction in performance advertising, however, could yield benefits for investors, to the extent that any such advertisement not made has an increased risk of misleading investors.

4. Conditions Applicable to Testimonials and Endorsements, Including Solicitations

The final rule prohibits the use of testimonials and endorsements unless they comply with certain disclosure, oversight, and disqualification requirements, substantially as originally proposed for solicitors. The costs and benefits of this provision of the final rule differ depending on whether the testimonial or endorsement is compensated or uncompensated.

[919] *See* MFA/AIMA Comment Letter I.

[920] *See infra* section II.C.1.b.

[921] *See supra* section III.D.1 and note 902.

[922] *See supra* section II.B.5.a.

[923] *See supra* section III.C.1.b.

[924] Consumer Federation Comment Letter; NASAA Comment Letter.

[925] *See supra* section III.D.1 and *infra* section IV.A.

To clarify the change from the baseline for each type of advertisement, we analyze the costs and benefits of imposing these conditions on testimonials and endorsements that are not compensated. We then separately analyze the costs and benefits of these conditions for testimonials and endorsements that are compensated. As described above, the baseline for each type of advertisement is different, making the extent of the effects of the changes effected by the rule different for advisers, depending on whether they are complying with the current advertising rule and the current solicitation rule.[926]

We have quantified a subset of the costs associated with requirements for testimonials and endorsements, specifically, the burden of information collection costs estimated for the purposes of the Paperwork Reduction Act.[927] The disclosure and oversight provisions of the requirements for testimonials and endorsements will entail information collection costs, and investment advisers will incur initial implementation costs. We estimate that investment advisers will incur an initial implementation cost of $1,060 for each adviser, or $7,273,720 in total.[928] We estimate that investment advisers will incur an ongoing internal cost of $5,729 per year per adviser, $500 external cost for those advisers that deliver disclosures by postal service, and $39,998,598 in total.[929] We therefore estimate a total industry cost in the first year of $47,272,318.[930]

a. Communications Other Than Compensated Testimonials or Endorsements

The current advertising rule prohibits, but does not define, testimonials and does not address endorsements. In contrast to the current advertising rule, the final rule prohibits advisers from using, or compensating promoters for testimonials and endorsements, unless certain requirements are met, and distinguishes statements made by investors from those made by non-investors.

In general, we believe that the ability of advisers to advertise testimonials and endorsements will give investors additional information about the views of clients and non-clients with an investment adviser, which could improve the matches between investors and investment advisers. Additionally, the ability to use testimonials and endorsements in advertisements might incentivize investment advisers to further improve the quality of the services they provide, because investment advisers will be better able to advertise any improvements in their services. We discuss the costs and benefits of the requirements that must be met in order to include a testimonial or endorsement in an advertisement below.

i. Disclosures

The final rules impose disclosure requirements on investment advisers that make use of testimonials and endorsements and on persons giving testimonials and endorsements, unless subject to an exemption.[931] Under the final rule, an investment adviser must disclose, or reasonably believe that the person giving the testimonial or endorsement discloses, (i) clearly and prominently, (A) whether the person giving the testimonial or endorsement is a client or a non-client, as applicable, (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable, and (C) a brief statement of any material conflicts of interests; (ii) the material terms of the person's compensation arrangement, if any, including a description of the compensation provided or to be provided to the person for the testimonial or endorsement; and (iii) a description of any material conflicts of interest the person may have that result from the investment adviser's relationship with such person and/or any compensation arrangement. These disclosures must be delivered at the time the testimonial or endorsement is disseminated.

These disclosures can aid investors by providing information and context with which to evaluate a promoter's claims. Investors may benefit from receiving information about the experiences of other investors or other people. In addition, the requirement that the advertisement clearly and prominently disclose the client status of the promoter, the fact of compensation, and a brief statement of material conflicts of interests will increase the salience of these disclosures, and increase the likelihood that they are incorporated into an investor's decisions. Testimonials and endorsements may benefit investment advisers by allowing them to show satisfied clients or other persons willing to support the investment adviser.

However, the positivity of a testimonial or endorsement may not always reflect the investment adviser's ability or the adviser's potential ''fit'' for investors. The final rule may, therefore, lead investment advisers, regardless of ability, to inefficiently increase spending on testimonials or endorsements in advertisements to attract clients. In this case, the fees that result from higher advertising spending could mitigate the benefits that the additional information in testimonials and endorsements might provide to investors. Additionally, to the extent that market practices have developed in such a way that, under circumstances described in staff no-action letters, market participants already include information in advertisements that would be a testimonial under the final rule, the costs and benefits of the final rule's testimonials and endorsements provision will be decreased in magnitude relative to the baseline.

The final rule's requirement for disclosure of client or non-client status of the promoter, material terms of compensation, and material conflicts of interest, will provide useful information to prospective clients about the potential credibility and incentives of the provider of the testimonial or endorsement. This provision might also yield benefits for investors if investment advisers or their promoters are incentivized to mitigate their conflicts of interest or otherwise improve the quality of their services as a result of the disclosures. This might improve the efficiency of the investment adviser search process by improving the quality of the matches between investors and investment advisers, both because of the additional information about promoters' incentives and because it may lead investment advisers to alter their arrangements to mitigate conflicts of interest.

However, conflict of interest disclosures may not necessarily lead to optimal decisions by investors. For example, the Commission's Financial Literacy Study surveyed investors about their understanding of fees as disclosed in a typical brochure, finding that many respondents had difficulty interpreting certain disclosures that are relevant to evaluating conflicts of interest.[932] These

[926] *See supra* section III.D.3.

[927] *See infra* section IV.B.2.

[928] Initial cost burden estimate of $1,060 from section IV.B.2. 13,724 × ½ = 6,862 affected investment advisers. $1,060 × 6,862 = $7,273,720.

[929] Ongoing cost estimate includes disclosure, oversight, and annual costs from section IV.B.2. $5,679 × 6,862 + $500 external cost × 6,862 advisers × 20% mail use = $39,998,598.

[930] This number is based on the following calculation: $7,273,720 + $39,998,598 = $47,272,318.

[931] *See supra* section II.C.5 (discussing partial exemptions from disclosure requirements).

[932] ''For instance, they had difficulty calculating hourly fees and fees based on the value of their assets under management. They also had difficulty answering comprehension questions about investment adviser compensation involving the purchase of a mutual fund and identifying and computing different layers of fees based on the

findings are consistent with academic literature that describes investors' difficulty in understanding financial disclosure. For example, one study shows that, in an experimental setting, even when subjects were told of the bias of persons who were giving them advice, participants did not fully adjust their behavior to reflect the disclosed bias.[933] In addition, these papers and others [934] find that mandating disclosure from biased persons may have the unintended consequence of making these persons appear honest and increase trust in them. While the context of these studies is not specific to investment advisers, promoters, or in certain cases, of financial advice generally, they provide evidence that suggests that disclosures might not fully mitigate the incentive problems generated by conflicts of interest. Additionally, advisers or their promoters may incur legal and compliance costs in connection with reviewing existing disclosures and drafting new disclosures to comply with the final rule.

ii. Oversight and Compliance

The final rule has an oversight and compliance provision that requires the investment adviser to have a reasonable basis for believing that a testimonial or endorsement complies with the rule.[935] This provision is designed to help ensure that communications made by promoters comply with the provisions of the final rule. This requirement will entail costs for both advisers and their promoters to devote staff and managerial resources, enter into new written agreements or amend existing written agreements, and update their processes to the extent necessary for oversight and compliance of testimonials and endorsements under the final rule.

b. Compensated Testimonials or Endorsements

The current solicitation rule prohibits advisers from providing solicitors with cash compensation, unless certain requirements are satisfied. Among these requirements is a requirement that the adviser enter into a written agreement requiring the solicitor to act in a manner consistent with the Advisers Act and its rules. Non cash-compensated solicitations are not subject to the solicitation rule, however. To the extent that non-cash compensated testimonials and endorsements are viewed as advertisements made directly or indirectly by an adviser, they may be subject to the current advertising rule, including its general prohibition on testimonials if applicable. Solicitations of private fund investors are not subject to the current solicitation rule, though they are subject to rule 206(4)–8 and are likely subject to restrictions applicable to private placements under the Federal securities laws. Persons who would be promoters under the final rule that are registered broker-dealers and FINRA members, such as those who transact in privately issued securities, are also subject to FINRA rules applicable to communications, including restrictions on the use of compensated testimonials, and may be subject to Regulation BI.

We believe that the costs and benefits of the conditions on the use of testimonials and endorsements in an advertisement will have similar costs and benefits to those described above,[936] though these effects will be mitigated to the extent that the adviser was complying with the current solicitation rule. To some extent these effects will also be mitigated to the extent the promoter is a registered broker-dealer and FINRA member; such a promoter could adapt existing compliance systems, for instance, but will need to modify for any differences under the two regulatory constructs.

i. Disclosures

We expect similar costs and benefits of the disclosure requirements for compensated testimonials and endorsements as described above for non-compensated testimonials and endorsements. For example, we expect investors to benefit from new disclosures, as mitigated to the extent that, for example, conflict of interest disclosures may not necessarily lead to optimal decisions by investors. Further, disclosures may impose compliance costs on advisers and promoters similar to those described above, including costs to draft new disclosures in connection with, for example, advertisements by non-cash compensated promoters and in connection with compensated testimonials or endorsements made to prospective or current investors in private funds advised by the adviser.

However, these costs and benefits may be mitigated with respect to compensated testimonials or endorsements for four reasons. First, these costs may be mitigated for communications made by cash-compensated solicitors, given the disclosure requirements under the current solicitation rule. Currently, cash compensated solicitors must provide disclosures to clients pursuant to rule 206(4)–3(b), as well as provide the investment adviser's Form ADV brochure and their disclosure statement to potential investors. As a result, we expect that these costs will be mitigated to the extent that this type of information is already known and accessible to the investment adviser and promoter, and to the extent that similar information is already provided under the current solicitation rule. Further, the final rule's requirement to provide disclosure at the time the testimonial or endorsement is disseminated is similar to the current solicitation rule's requirement to deliver disclosure at the time of any solicitation activities. Second, the final rule exempts from these disclosure requirements certain affiliates of the adviser, provided that the affiliation is readily apparent or disclosed to the client or investors at the time the testimonial or endorsement is disseminated.

Third, the costs and benefits of this provision may be mitigated because the final rule includes exemptions from these disclosure requirements. First, there is an exemption from these requirements when a broker-dealer provides a testimonial or endorsement to a retail customer that is a recommendation subject to Regulation BI. Second, when a broker-dealer provides a testimonial or endorsement to an investor that is not a retail customer as defined by Regulation BI, there is an exemption from the requirements to disclose the material terms of any compensation arrangement and a description of any material

amount of assets under management. Moreover, many of the online survey respondents on the point-of-sale panel had similar difficulties identifying and understanding fee and compensation information described in a hypothetical point-of-sale disclosure and account statement that would be provided to them by broker-dealers.'' *See* Financial Literacy Study, *supra* footnote 846.

[933] *See* Daylian M. Cain, *et al., The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest,* 34 J. L. Stud. 1 (2005); George Loewenstein, *et al., The Limits of Transparency: Pitfalls and Potential of Disclosing Conflicts of Interest,* 101 Am. Econ. Rev. 423 (2011).

[934] *See e.g.,* Steven Pearson, *et al., A Trial of Disclosing Physicians' Financial Incentives to Patients,* 166 Archives of Internal Medicine 623 (2006); Sunita Sah, George Loewenstein & Daylian M. Cain, *The Burden of Disclosure: Increased Compliance With Distrusted Advice,* 104 J. Personality & Soc. Psychol. 289 (2013).

[935] In addition, the final rule requires that an investment adviser have ''a written agreement with any person giving a compensated testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of the compensation for those activities.'' However, the rule does not contain this requirement in the case of uncompensated testimonials and endorsements or where *de minimis* compensation is provided to the promoter. For example, promoters providing testimonials or endorsements in refer-a-friend programs might not be subject to these requirements depending on the amount of compensation provided in such programs.

[936] *See supra* section III.D.4.a.

conflicts of interest. As a result, the extent of the effects of this exemption on investors will vary. Where the testimonial or endorsement is a recommendation to a retail customer subject to Regulation BI, broker-dealers, including those that are also registered as investment advisers, acc will have to comply with the Disclosure Obligation under Regulation BI and will not also be subject to disclosure requirements under the final rule. Although these investors will not receive the investor protection benefits of the marketing rule disclosures, the recommendation will be subject to Regulation BI requirements under the baseline. With respect to testimonials or endorsements by a broker-dealer to investors that are not retail customers (as defined by Regulation BI), although we believe such investors will be able to request from the broker-dealer other information about the solicitation, some may not. These exemptions may, therefore, result in a reduction of costs and benefits of the disclosure provisions for testimonials and endorsements to these investors.

These exemptions might also make advisers more likely to compensate a broker-dealer as a promoter rather than promoters that are not broker-dealers, which would give these broker-dealers a competitive advantage. Further, with respect to communications made by broker-dealers that are not so exempted, costs for promoters who are broker-dealers may also be mitigated to the extent that broker-dealers are already preparing similar disclosures in order to comply with other disclosure obligations.[937]

Finally, because there is no Form ADV brochure delivery requirement under the final rule, as compared to the current solicitation rule, we anticipate a reduction in costs associated with cash-compensated promoters no longer being subject to this requirement. We expect that this will not result in a loss of benefits to clients, however, because they will still receive the brochure from advisers as a result of advisers' delivery obligations. We recognize, however, that investment advisers and persons who are currently cash-compensated solicitors will bear costs as a result of the replacement of the current rule's disclosure requirements with the final rule's disclosure requirements.

ii. Oversight and Compliance

Investment advisers must have a reasonable belief that the solicitors comply with the provisions of the Advisers Act and rules under the current solicitation rule, and we therefore expect the magnitude of the costs and benefits from the application of the testimonials and endorsements requirements related to oversight and compliance to be relatively small for advisers complying with the current rule and for promoters that are cash solicitors under the current solicitation rule.

Under the current solicitation rule, investment advisers must make a bona fide effort to ascertain whether the cash-compensated solicitor has complied with the provisions of its written agreement with the adviser and must have a reasonable basis for so believing. As described above, the final rule has an oversight and compliance provision that requires the investment adviser to have a reasonable basis for believing that a testimonial or endorsement complies with the rule, and as applicable here, the adviser must also have a written agreement with the person giving a testimonial or endorsement that describes the scope of the agreed upon activities when making payments for compensated testimonials and endorsements that are above the *de minimis* threshold. This provision will help ensure that communications made by promoters comply with the provisions of the final rule. Further, this requirement would entail costs for both advisers and their promoters to devote personnel time and managerial resources to enter into written agreements and update the processes necessary for oversight and compliance of testimonials and endorsements.

These benefits and costs may, however, be mitigated for several reasons. First, to the extent that advisers with cash-compensated solicitors are already substantially performing this oversight in connection with their compliance with rule 206(4)–3's oversight requirements, the rule will not have these full effects. Second, for private placements of private fund shares, the written private placement agreement could meet the written agreement requirement. Third, the final rule includes certain exemptions from the requirement to enter into a written agreement with the adviser. The first such exemption applies where *de minimis* compensation is provided to the promoter. For example, promoters providing testimonials or endorsements in refer-a-friend programs will likely be eligible for this exemption. The second such exemption applies to certain affiliates of the adviser, provided that the affiliation is readily apparent or disclosed to the client or investors at the time the testimonial or endorsement is disseminated.

iii. Disqualification

The final rule contains disqualification provisions which prohibit an adviser from compensating a person, directly or indirectly, for any testimonial or endorsement if the adviser knows, or, in the exercise of reasonable care, should have known, that the person is an ineligible person at the time the testimonial or endorsement is disseminated. The rule defines an ''ineligible person'' to mean a person, who is subject to a disqualifying Commission action or disqualifying event, and certain of that person's employees and other persons associated with an ineligible person. The definition further encompasses, as appropriate, all general partners or all elected managers of an ineligible person.

Ineligible Persons and Disqualifying Events

Currently, the solicitation rule categorically bars advisers from making cash payments to certain disqualified persons. The final rule's disqualification provisions generally expand the set of ineligible persons by including certain disciplinary actions that are not part of the current solicitation rule. For example, under the final rule a disqualifying event is expanded to also include generally actions of the CFTC and self-regulatory organizations. It also newly includes Commission cease and desist orders from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the Federal securities laws, and Section 5 of the Securities Act.

The final rule's prohibition on compensating such ineligible persons could yield benefits for investors by prohibiting investment advisers from hiring promoters most likely to abuse investors' trust—that is, promoters who have been subject to certain Commission opinions or orders, other regulatory actions, civil actions, or convictions for certain conduct. This prohibition could, however, also yield costs for advisers. For example, an adviser may not be able to hire a solicitor that the adviser otherwise feels to be best able to promote its service. This may reduce the number of persons available to advisers to serve as promoters, increase the cost of obtaining referrals for investment advisers, and impose costs on those promoters who are disqualified. The application of the final rule's definition of ineligible person could also impose additional compliance and search costs on investment advisers. For example, investment advisers will need to check that a promoter is not an ineligible

[937] *See supra* section II.C.2.

person. In addition, to the extent the disqualification provisions under the new rule result in an increase in the number of disqualified persons as compared to the current rule, the number of available potential promoters would fall, which could increase the difficulty of finding a promoter for an adviser.

We expect that the benefits and costs of this provision may be mitigated for a number of reasons. First, to the extent a solicitor is currently cash-compensated and currently subject to the solicitation rule, the final disqualification provisions are not entirely new, and only those changes from the solicitation rule's disqualification provisions, including new bars on persons subject to CFTC and self-regulatory organization orders, will have any economic effects.

Second, the final rule includes certain exemptions from this requirement. The first such exemption is available for promoters who receive *de minimis* compensation. The second exemption is available for promoters that are brokers or dealers registered with the Commission in accordance with section 15(b) of the Exchange Act, provided they are not subject to statutory disqualification under the Exchange Act. Broker-dealers currently have similar provisions that protect investors by disqualifying certain individuals from acting as a broker-dealer. This exemption may further have the effect of making it more likely that an adviser will compensate a broker-dealer as a promoter. In addition, persons that are covered by rule 506(d) of Regulation D under the Securities Act with respect to a rule 506 securities offering and whose involvement would not disqualify the offering under that rule (such as persons acting as placement agents for a private fund) will also not be disqualified under this disqualification provision of the final rule, which could similarly encourage the use of such agents in connection with marketing activities for private funds.

Finally, the final rule's disqualification provisions will not disqualify any promoter for any matter(s) that occurred prior to the effective date of the rule, if such matter would not have disqualified the promoter under rule 206(4)–3, as in effect prior to the effective date of the rule. We expect this will reduce the costs and benefits of the disqualification provisions when the rule initially goes into effect.

The final rule also provides a conditional carve-out from the definition of disqualifying event, with respect to a person that is subject to certain Commission opinions or orders, provided certain requirements are met. The provisions of this conditional carve-out are similar to statements in staff no-action letters in which the staff stated that it would not recommend enforcement action to the Commission under section 206(4) and rule 206(4)–3 if the solicitor's practices were consistent with certain representations made in connection with those letters.

Diligence Standards

In addition to changing what promoters are ineligible to be compensated by an adviser, the final rule changes the diligence standards of investment advisers when hiring promoters. It establishes a knowledge or reasonable care standard for the disqualification provisions, which replaces the current solicitation rule's absolute bar on paying cash for solicitation activities to a person with any disciplinary history enumerated in the rule.

In general, we believe that the requirement to exercise reasonable care at the time of dissemination will yield indirect benefits for investors, because it will require advisers to help ensure that the protections of the rule's disqualification provisions are realized for investors. This standard will also generally impose costs on advisers related to the necessary investigation of the promoter and to ensuring that they remain in compliance.

We expect that the benefits and costs of this provision may be mitigated to the extent a solicitor is cash-compensated and previously subject to the solicitation rule. The required diligence standard in the final rule is formally less burdensome than was required under the current solicitation rule, which could lower compliance costs for advisers, including by reducing the likelihood that advisers will inadvertently violate the provision due to disqualifying events that they would not, even in the exercise of reasonable care, have known existed. We do not, however, believe that this standard will significantly affect the client and investor protections of the disqualification provisions, because we do not believe that investigation beyond what is reasonable under the circumstances would yield substantial benefits. Under the final rule, an adviser will need to inquire into the relevant facts of an engagement, with the method or level of due diligence or other inquiry varying depending on the circumstances of the compensated promoter and its arrangement with the adviser.[938] To the extent that an engagement presents greater risk, greater screening and compliance mechanisms would be required under the rule, which we believe would preserve these benefits. For example, to the extent that there are indicators suggesting bad actor involvement, increased levels of due diligence will be required. Further, we believe that advisers will generally use many of the same mechanisms that they use today to determine whether a disqualified person is an ineligible person under the final rule. To the extent that the mechanisms currently in use already resemble or satisfy the final rule's diligence standard, the cost burden of the new standard may be mitigated.

5. Third-Party Ratings

The final rule will also restrict the use of third-party ratings in advertisements, subject to certain requirements about the structure of the rating, and clear and prominent disclosures about the date of the rating, the identity of the third party, and compensation provided for obtaining or using the rating. We analyze the costs and benefits of imposing restrictions on the use of third-party ratings on communications subject to these restrictions below.

While the current advertising rule does not mention third-party ratings, it prohibits an advertisement that contains a third-party rating if it contains an untrue statement or a material fact or is otherwise false or misleading. Further, the current solicitation rule, like the current advertising rule, does not expressly mention third-party ratings.

The staff has taken the position that certain ratings may constitute testimonials and stated it would not recommend enforcement action under the prohibition of testimonials if an adviser made references in an advertisement to third-party ratings that reflect client experiences, based on certain representations.[939] Specifically, no-action letters have stated the staff would consider the following when not recommending an enforcement action for potentially false or misleading ratings in an advertisement: Whether the advertisement disclosed the criteria on which the rating was based, whether favorable ratings were selectively disclosed, whether there were any untrue implications of being a top-rated adviser, the identity of who created and conducted the rating, and whether investors can expect similar

[938] *See supra* section II.C.4.a.

[939] *See* DALBAR, Inc., SEC Staff No-Action Letter (Mar. 24, 1998).

performance in the future from the investment adviser.[940]

The disclosure requirements of the final rule will provide investors more information to judge the context of a third-party rating, which might reduce the likelihood that investors will be misled by an investment adviser's ratings.[941] Additionally, the final rule requires that the adviser have a reasonable basis for believing that any questionnaire or survey used in the preparation of a third-party rating be structured to make it equally easy for a participant to provide favorable and unfavorable responses, and not designed or prepared to produce any predetermined result, which might also reduce the likelihood that investors will be misled. Investors will benefit from the disclosure requirements for third-party ratings, not only because the disclosures provide investors with additional context to evaluate the information provided in ratings, but also because the required disclosures may dissuade advisers from including misleading third-party ratings.

The disclosures required by the final rule might reduce the incentives of investment advisers to include third-party ratings that might be stale or otherwise misleading. The requirement to create these disclosures could impose costs on advisers, including compliance costs related to drafting these disclosures and ensuring that they comply with the requirements of the final rule. In addition, the final rule requires that investment advisers make certain disclosures or reasonably believe that such disclosures have been made, which will impose additional costs on investment advisers. Investment advisers and the associated personnel that use third-party ratings in their advertisements will bear costs associated with compliance with this aspect of the final rule.[942] These costs could entail the dedication of personnel time and managerial resources to draft disclosures and to satisfy due diligence requirements.

However, these costs and benefits may be mitigated because the third-party rating requirements of the final rule are similar to the representations made in staff letters in which it has previously stated that it would not recommend enforcement under section 206(4) and rule 206(4)–1. As a result, advisers may only bear the incremental costs of modifying compliance systems to account for the differences of the final rule requirements, though these advisers would also bear the costs of evaluating those differences.

We have quantified a subset of the costs associated with requirements for the use of third-party ratings in advertisements, specifically, the burden of information collection costs estimated for the purposes of the Paperwork Reduction Act.[943] The disclosure provisions of the requirements for testimonials and endorsements will entail information collection costs, and investment advisers will incur initial implementation costs. We estimate that investment advisers will incur an initial implementation cost of $1,011 for each adviser, or $6,937,482 in total.[944] We estimate that investment advisers will incur an ongoing cost of $252.74 per year per adviser, or $1,734,301.88 total ongoing cost per year. We therefore estimate a total industry cost in the first year of $8,671,783.88.[945]

6. Performance Advertising

The final rule includes provisions that impose specific requirements and prohibitions on the inclusion of performance information in advertisements. These provisions include net performance requirements, prescribed time period requirements, prohibitions of statements expressing or implying Commission approval or review of the calculation or presentation of performance results in the advertisement, and requirements for related performance, extracted performance, hypothetical performance, and predecessor performance. We analyze the costs and benefits of imposing these specific requirements on the use of performance advertising in communications below.

We have quantified a subset of the costs associated with the restrictions on the use of performance advertising in advertisements, specifically, the burden of information collection costs estimated for purposes of the Paperwork Reduction Act.[946] The provisions of the requirements for performance advertising will entail information collection costs and modification of the presentation of performance. These collection of information costs primarily entail an initial cost to update performance calculations, and an ongoing annual cost for investment advisers. We estimate that investment advisers will incur a total initial implementation cost $394,998,740[947] and a total ongoing cost of $273,772,232 per year.[948] We therefore estimate the

[940] *See id.; see* Investment Adviser Association, SEC Staff No-Action Letter (Dec. 2, 2005).

[941] *See* supra section III.B.

[942] Although the investment advisers bear the legal burden of complying with third-party ratings requirement, we expect that the costs of this requirement will be partially borne by other parties, such as persons communicating on behalf of an investment adviser.

[943] *See infra* section IV.B.3.

[944] Initial cost burden estimate of $1,011 from section IV.B.3. 13,724 × ½ = 6,862 affected investment advisers. $1,011 × 6,862 = $6,937,482.

[945] Ongoing cost estimate includes disclosure, oversight, and annual costs from section IV.B.3. $252.74 × 6,862 = $1,734,301.88. For the total first year cost, $6,937,482 + $1,734,301.88 = $8,671,783.88.

[946] *See infra* section IV.B.4.

[947] These total cost estimates differ from those in section IV.B.4, because the estimates in those sections amortize the initial implementation costs over three years, while the cost estimates in this section do not. However, both estimates make identical assumptions about the resources required to comply with the rule. The initial burden associated with net performance is based on 15 hours × $337 (compliance manager and compliance attorney, split evenly) = $5,055 for each of the 13,038 investment advisers expected to be affected, implying an initial cost of $65,907,090. The initial burden associated with performance time periods is based on 35 hours × $337 (compliance manager and compliance attorney, split evenly) = $11,795 for each of the 13,038 investment advisers expected to be affected, implying an initial cost of $153,783,210. The initial burden associated with related performance is based on 30 hours × $337 (compliance manager and compliance attorney, split evenly) = $10,110 for each of the 10,979 investment advisers expected to be affected, implying an initial cost of $110,997,690. The initial burden associated with extracted performance is based on 10 hours × $337 (compliance manager and compliance attorney, split evenly) = $3,370 for each of the 686 investment advisers expected to be affected, implying an initial cost of $2,311,820. The initial burden associated with hypothetical performance is based on 15 hours × $337 (compliance manager and compliance attorney, split evenly) + 7 hours × $530 (compliance officer) = $8,765 for each of the 6,862 investment advisers expected to be affected, implying an initial cost of $60,145,430. The initial burden associated with predecessor performance is based on 20 hours × $337 (compliance manager and compliance attorney, split evenly) = $6,740 for each of the 275 investment advisers expected to be affected, implying an initial cost of $1,853,500. Therefore, the total initial industry burden associated with the final rule is $197,721,270 + $153,783,210 + $110,997,690 + $2,311,820 + $60,145,430 + $1,853,500 = $394,998,740. *See infra* section II.B.4.

[948] The ongoing burden associated with net performance is based on 10.5 hours × $337 (compliance manager and compliance attorney, split evenly) = $3,538.50 for each of the 13,038 investment advisers expected to be affected, implying an ongoing cost of $46,134,963. The ongoing burden associated with performance time periods is based on 28 hours × $337 (compliance manager and compliance attorney, split evenly) = $9,436 for each of the 13,038 investment advisers expected to be affected, implying an ongoing cost of $123,026,568. The ongoing burden associated with related performance is based on 17.5 hours × $337 (compliance manager and compliance attorney, split evenly) = $5,897.50 for each of the 10,979 investment advisers expected to be affected, implying an ongoing cost of $64,748,652.50. The ongoing burden associated with extracted performance is based on 7 hours × $337 (compliance manager and compliance attorney, split evenly) = $2,359 for each of the 686 investment advisers expected to be affected, implying an ongoing cost of $1,618,274. The ongoing burden associated with hypothetical performance is based on 10.5 hours × $337 (compliance manager and compliance attorney,

total cost in the first year to be $672,544,972.[949]

a. Net Performance Requirement

The final rule will prohibit any presentation of gross performance unless the advertisement also presents net performance with at least equal prominence to the presentation of gross performance. In addition, the net performance must be calculated over the same time period, and using the same type of return and methodology as, the gross performance. While the current advertising rule does not mention performance advertising, it prohibits any untrue statement of a material fact and statements that are otherwise false or misleading, which includes statements made in the context of performance advertising. The staff has stated its views about the types of circumstances in which it may view the presentation of performance results as misleading, including, for example, where an adviser did not disclose how advisory fee expenses, commissions, and reinvestment of dividends affect the performance results.[950]

This provision will likely benefit investors by providing them with additional information about the performance generated by an investment adviser, including the effect of fees and expenses on that performance, and reducing the chance that they are misled by presentations of gross performance. To the extent that investment advisers' current practices differ from the requirements of this provision, these requirements may impose costs on advisers, including advisers that serve private funds, to compute and include net performance in their marketing communications, to the extent that advisers do not currently compute and include net performance. These costs could involve devoting personnel time, modifying marketing materials, and devoting managerial resources. In addition, some investors may be better able to make their own risk adjusted return assessments, and these investors may similarly derive fewer benefits from this requirement.

However, these costs and benefits may be mitigated to the extent that this requirement is similar to the circumstances under which the staff has previously stated that it would not recommend enforcement under section 206(4) and rule 206(4)–1. Given that many investment advisers already provide this information in light of staff no-action letters, there are not likely to be significant costs or benefits to this provision.

b. Prescribed Time Periods

The final rule prohibits the presentation of performance results of any portfolio or any composite aggregation of related portfolios, other than any private fund, in advertisements unless the results for one, five, and ten year periods are presented as well. Each of the required time periods must be presented with equal prominence and end on a date that is no less recent than the most recent calendar-year end.[951] If the portfolio was not in existence for the full duration of any of these three periods, the lifetime of the portfolio can be substituted. Under the baseline for current advertisements, there is no such Commission requirement relating to performance advertising.

Requiring advertisements to include one, five, and ten year period performance will benefit investors other than private fund investors by giving them standardized information about the performance and limiting the potential that an investor could be unintentionally misled about an investment adviser's performance through the investment adviser's selection of performance periods. The requirement will impose costs on investment advisers, who will need to compute the performance for the prescribed time periods, update their advertising materials, and devote personnel time to ensure compliance with the final rule. These costs may disincentivize the presentation of performance results of any portfolio or any composite aggregation of related portfolios.

However, these benefits and costs may be mitigated to the extent that this requirement is similar to information currently collected and provided to clients in order to comply with GIPS standards to present performance information. In addition, to the extent that advisers already present, for example, performance information for these time periods, these costs and benefits may also be mitigated.

c. Statements of Commission Approval or Review

The final rule prohibits any advertisement that includes a statement, whether express or implied, that the calculation or presentation of performance results has been reviewed or approved by the Commission. This prohibition will benefit investors by preventing misleading advertisements that could lead investors to draw false conclusions about the Commission's approval of a presentation or calculation of performance. Any such statement would be false, as the Commission does not review or approve of calculations or presentations of performance. The prohibition may likely impose costs associated with legal review of performance presentation, but these costs are likely to remain small. Further, such costs may be mitigated to the extent that advisers currently have procedures to ensure compliance with section 208(a), which contains a similar prohibition from representing or implying that an adviser's abilities or qualifications have been passed upon by the United States or any agency thereof.

d. Related Performance

The final rule will condition the presentation of ''related performance'' in all advertisements on the inclusion of all related portfolios. However, the final rule will allow related performance to exclude related portfolios as long as the advertised performance results are not materially higher than if all related portfolios had been included. This exclusion will be subject to the rule's requirement that the presentation of performance results of any portfolio include results for one-, five-, and ten-year periods. The final rule will allow related performance to be presented either on a portfolio-by-portfolio basis or as a composite of all related portfolios. The inclusion of related performance in advertisements may give investment advisers flexibility in how they choose to advertise their performance, such as which aspects of their performance they can advertise, and might give investors additional information about how an investment adviser managed portfolios having substantially similar investment policies, objectives and strategies.

The requirements for related performance may, however, impose costs on investment advisers related to the creation of composites to the extent that they do not currently create composites or create composites using the final rule's criteria for related portfolios. For example, the ''not materially higher than'' requirement for

split evenly) + 3.75 hours × $530 (compliance officer) = $5,526 for each of the 6,862 investment advisers expected to be affected, implying an ongoing cost of $37,919,412. The ongoing burden associated with predecessor performance is based on 3.5 hours × $337 (compliance manager and compliance attorney, split evenly) = $1,179.50 for each of the 275 investment advisers expected to be affected, implying an initial cost of $324,362.50. Therefore, the total initial industry burden associated with the final rule is $138,404,889 + $123,026,568 + $64,748,652.50 + $1,618,274 + $37,919,412 + $324,362.50 = $273,772,232. *See infra* section II.B.4.

[949] $394,998,740 (total initial cost) + $273,772,232 (total ongoing cost) + $3,774,000 (external cost) = $672,544,972 (total first year cost).

[950] *See supra* section III.C.1.b.

[951] *See supra* section II.E.2.

excluding related portfolios may generate an additional need to recalculate performance to verify that the related performance satisfies the requirement. Further, as discussed above, we understand that an adviser will likely be required to calculate the performance of all related portfolios to ensure that any exclusion of certain portfolios meets the rule's conditions, which may be burdensome on advisers, particularly smaller advisers.[952]

However, we expect investment advisers to incur these calculation costs only if they expect sufficient benefits from inclusion of related performance. Further, we expect that these costs and benefits may be mitigated to the extent that advisers currently include related performance presentations in their advertisements that comply with the current rule.[953] Commenters generally described the related performance definition that was originally proposed as being similar to industry practice.[954] In addition, advisers that comply with GIPS standards are permitted to show related performance in advertisements, and presentations that meet the GIPS standard requirements to show all related performance will also satisfy the requirements of this provision to show all related performance.

e. Extracted Performance

The final rule will condition the presentation of extracted performance in all advertisements on the advertisement providing, or offering to provide promptly, the performance results of the total portfolio from which the performance was extracted. ''Extracted performance'' means ''the performance results of a subset of investments extracted from a portfolio.'' [955] While the current advertising rule does not mention extracted performance, it prohibits any untrue statement of a material fact and statements that are otherwise false or misleading, which includes statements made in the context of advertising extracted performance.

The use of extracted performance in advertisements will benefit investors by giving them information about performance results applicable to a particular subset of the adviser's investments, and the accompanying disclosures could help investors contextualize the claims of an investment adviser about its extracted performance, thereby reducing the risk that investors might be misled by such extracted performance.

Investment advisers who use extracted performance in their advertisements will likely incur costs to prepare the performance results of the total portfolio from which the performance was extracted, to the extent that they do not do this already. The final rule does not prohibit an adviser from presenting a composite of extracts, including composite performance that complies with GIPS standards. However, any presentation of a composite of extracts is subject to the additional protections that apply to hypothetical performance, as discussed below, and as a result, these additional protections may result in additional burdens for advisers that typically present extracted performance from multiple portfolios as a composite, and potentially limit these types of presentations of performance to institutional investors.

However, these benefits and costs may be mitigated to the extent that the restrictions imposed by this provision are similar to the manner in which advisers currently present extracted performance, including under GIPS standard requirements applicable to similar presentations of extracted performance, or other requirements.

f. Hypothetical Performance

The rule also prohibits the use of hypothetical performance in advertisements unless (i) the investment adviser adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provides, or if the intended audience is an investor in a private fund provides, or offers to provide promptly, sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions. The rule defines several types of hypothetical performance—model performance, performance derived from model portfolios; backtested performance, performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those periods; and targeted or projected performance returns with respect to any portfolio or to the investment services offered in the advertisement.

The current advertising rule does not explicitly address hypothetical performance. The Commission has, however, brought enforcement actions alleging that the presentation of performance results that were not actually achieved would be misleading where certain disclosures were not made, including disclosure that the performance results were hypothetical or disclosure of the relevant limitations inherent in hypothetical results and the reasons why actual results would differ.[956]

The final rule's imposes minimum standards for the presentation of hypothetical performance in advertisements, which could potentially increase the willingness of investment advisers to use hypothetical performance. If investment advisers increase their use of hypothetical performance in advertising, investors may benefit from the additional information provided by hypothetical performance advertising, together with information and context that may help investors to better understand it. This additional information could aid an investor in the choice of an investment adviser by helping investors find a better match or reducing costs associated with finding an investment adviser.

To the extent that these requirements will help ensure that hypothetical performance is disseminated to the specific investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations, these requirements on the presentation of hypothetical performance will benefit investors. Although investors will not face any direct costs from the inclusion of hypothetical performance, they may face indirect costs associated with processing and interpreting this new information if investment advisers increase their use of hypothetical performance. Even if investors are provided with sufficient information to contextualize hypothetical performance, they may need time and expertise to interpret that contextual information. Some, investors might have difficulty interpreting the context of hypothetical performance because of a lack of resources of financial expertise, which could lead to poorer matches with investment advisers. However, the final

[952] *See* IAA Comment Letter.

[953] The use by investment advisers that are also broker-dealers of certain forms of related performance in advertisements may be viewed by FINRA as inconsistent with the content standards in FINRA rule 2210.

[954] *See* MFA Comment Letter I; Proskauer Comment Letter.

[955] Final rule 206(4)–1(e)(6).

[956] *See supra* section III.C.1.b.

rule requires disclosures and contextual information for hypothetical performance that are sufficient for the intended audience, which should mitigate these costs to investors.

Advisers may incur costs associated with complying with the three conditions described above, such as consulting with in-house counsel, time to draft these policies and procedures and disclosures, and requiring firms to pay outside counsel or consultants to draft or review these policies and procedures and disclosures. These requirements could also entail costs such as training of staff to comply with the policies and procedures, and demands on personnel time and counsel to draft and review advertisements and disclosures to ensure compliance with the policies and procedures and the rule's requirements. We recognize that investment advisers will need to evaluate their intended audiences, as well as ensure that the advertisement is tailored to the audience receiving it, which will cause advisers to incur costs. An adviser may make such evaluations based on past experiences with investor types, including, for example, routine requests from those types of investors in the past, or based on information they have gathered from potential investors (*e.g.,* questionnaires, surveys, or conversations) or academic research.[957] Investment advisers are, however, unlikely to incur these costs if they do not expect the benefits of hypothetical performance advertising to exceed the costs associated with screening.

The costs and benefits associated with these restrictions may, however, be mitigated to the extent that advisers currently present information that meets the final rule's definition of ''hypothetical performance'' in circumstances consistent with the representations made in staff no-action letters. Additionally, to the extent that some investment advisers already maintain policies and procedures to screen prospective clients in order to comply with the GIPS standards, the net costs and benefits associated evaluating an ''intended audience'' for purposes of complying with this requirement may be mitigated. Under these circumstances, advisers may only bear the incremental costs of modifying compliance systems and disclosures to account for the differences of the final rule's requirements, though these advisers would also bear the costs of evaluating those differences.

g. Predecessor Performance

The final rule subjects the presentation of predecessor performance to several requirements: (i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser; (ii) the accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors; (iii) all accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods required by the final rule; and (iv) the advertisement includes, clearly and prominently, all relevant disclosures, including that the performance results were from accounts managed at another entity.

Under the current advertising rule, predecessor performance is not explicitly addressed; however, the staff has stated in no-action letters that it would not view advertisements that include predecessor performance as misleading under certain circumstances.[958] These circumstances are similar to the requirements of the final rule, and costs and benefits may flow from the extent to which the rule imposes requirements for use of predecessor performance.

To the extent that the final rule's provisions permit the use of predecessor performance in advertisements, predecessor performance has the potential to provide additional information and context for investors. This information could improve investor decisions and reduce the costs associated with searching for an investment adviser. However, the rule has requirements that will impose costs on investment advisers that present predecessor performance. Determining the extent to which the personnel and the portfolios of a predecessor adviser are sufficiently similar under the rule can require resources, especially when portfolios are managed by multiple people, or have long or complicated performance histories. Additionally, investment advisers may bear additional costs to analyze any intellectual property issues or non-compete agreements between portfolio management personnel and their previous firms.

7. Amendments to Form ADV

Under the final rule, Form ADV will include additional questions about investment advisers' advertising practices, including performance advertising, the use of testimonials and endorsements, and compensation for promoters. Current Form ADV does not contain any questions about advertising practices, and the changes to Form ADV will support the Commission's compliance oversight efforts, thus helping the Commission monitor market practices and the effects of its rules. For example, the changes to Form ADV will allow the Commission to understand the relative popularity of certain advertising practices and compensation practices for promoters. To the extent that these amendments do facilitate compliance oversight, these changes may benefit clients. These investors may also derive benefits from the information provided in the Form ADV, as amended, which may help them make better decisions with respect to which advisers' services to utilize. Additionally, it will enable the Commission to evaluate the final rule's requirements, and their impact on how investment advisers choose to advertise. Investment advisers that use advertisements will likely incur additional costs associated with collecting information to answer these questions, as investment advisers will need to accurately track the types of content in their advertisements.

We have quantified a subset of the costs associated with changes to Form ADV, specifically the burden of information collection costs estimated for the purposes the Paperwork Reduction Act. The amendments to Form ADV will impose additional ongoing costs for investment advisers. We estimate the marginal increase in the aggregate cost burden of these changes to Form ADV will be $4,355,288 per year for RIAs not obligated to prepare and file relationship summaries, $3,429,942 per year for RIAs obligated to prepare and file relationship summaries, and $171,881 per year for exempt reporting advisers.[959] We therefore estimate the total annual cost increase for all advisers to be $7,957,111 per year.[960] However, we note that some portion of the increase in costs is due to an increase in the number of RIAs that will bear these costs, and not entirely

[957] See *supra* section II.E.6.b.

[958] *See* Horizon Letter.

[959] The total cost increase for exempt reporting advisers reflects an increase in the number of exempt reporting advisers rather than a per adviser cost increase generated by the final rule.

[960] *See infra* section IV.E. Cost estimates were calculated by subtracting current Form ADV cost burdens from the new Form ADV cost burdens.

due to an increase in the cost burden for an individual RIA.

8. Recordkeeping

The amendments to the recordkeeping rule will require investment advisers to make and keep records of all advertisements they disseminate. Generally, the amended recordkeeping rule will require additional retention of written or distributed communications of an investment adviser, including certain oral communications. For example, the current recordkeeping rule requires the retention of advertisements disseminated to ten or more individuals. In contrast, the amendments require that advisers retain all advertisements, with the two exceptions. First, for oral advertisements, the adviser may, instead of recording and retaining the advertisement, retain a copy of any written or recorded materials used by the adviser in connection with the oral advertisement.[961] Second, if an adviser's advertisement includes a compensated oral testimonial or endorsement, the adviser may, instead of recording and retaining the advertisement, make and keep a record of the disclosures provided to investors.[962] In addition, if the required disclosures with respect to a testimonial or endorsement are not included in the advertisement, then the adviser must retain copies of such disclosures provided to investors.[963] The recordkeeping rule will continue to require that advisers keep a record of communications other than advertisements (for example, notices, circulars, newspaper articles, investment letters, and bulletins) that the investment adviser disseminates, directly or indirectly, to ten or more persons. Additionally, there are some types of newly required records that can be particularly costly to retain. For example, creating and retaining records of orally delivered disclosures will impose extra costs on investment advisers and promoters. These requirements may result in costs on investment advisers, such as dedicating personnel time to capture and retain these records.

The amendments to the recordkeeping rule will also require investment advisers to make and keep: (i) Documentation of communications relating to predecessor performance; (ii) documentation to support performance calculations; (iii) copies of any questionnaire or survey used in preparation of a third-party rating (in the event the adviser obtains a copy of the questionnaire or survey); (iv) if not included in an advertisement, a record of disclosures provided to the client; (v) documentation substantiating the adviser's reasonable basis for believing that a testimonial, endorsement, or third-party rating complies with the applicable tailored requirements of the marketing rule and copies of any written agreement made with promoters; (vi) a record of certain affiliated personnel of the adviser; and (vii) a record of who the ''intended audience'' is.

These requirements will impose compliance costs on advisers related to the creation and retention of these records. These costs will be associated with additional personnel time to capture or retain these communications. Notably, retaining documents that form the basis of a calculation could be more expensive due to the requirement that advisers retain calculation information for portfolios (and not only for managed accounts and securities recommendations). However, we believe that there is overlap between accounts included in ''portfolios'' and those ''managed accounts'' already captured by the current recordkeeping rule. Retaining these documents might require an investment adviser to evaluate which documents are relevant for a performance calculation, which could potentially generate costs for the investment adviser. Similarly, advisers will incur costs related to required records that are not communications, including a record of who an advertisement's ''intended audience'' is, for example. Creation of these records might involve research and collection of information about an investment adviser's intended audience. Furthermore, the recordkeeping rule requires advisers to retain documents that support the inclusion of predecessor performance in an advertisement, including a requirement to make and keep originals of all written communications received and copies of all written communications sent by an investment adviser relating to predecessor performance and the performance or rate of return of any portfolios. In contrast, this provision in the current recordkeeping rule only requires advisers to make and keep originals of all written communications received and copies of all written communications sent by an investment adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations. The recordkeeping rule also requires that a list of certain affiliated personnel be retained, to parallel the exemption for certain affiliated personnel from the compensated testimonials and endorsements requirements. This requirement may generate costs for the investment adviser to retain and update this list. Some of these costs may ultimately be passed on to clients or investors through higher fees.

These costs may, however, be mitigated to the extent that advisers are already retaining similar records. Under the current recordkeeping rule, for example, advisers are required to retain originals of documentation supporting the calculation of performance or rate of return of all managed accounts or securities recommendations. The amendments to the recordkeeping rule, in contrast, will also require documentation supporting the calculation of performance or the rate of return for any or all portfolios. As a result, the total costs of compliance for advisers with respect to communications previously included in the definition of an advertisement will be mitigated somewhat. Further, the staff has, for example, taken the position that rule 204–2(a)(16) also applies to a successor's use of a predecessor's performance data.[964] As a result, retention of some documentation and written communications required to be retained under the recordkeeping rule will impose relatively minor costs on investment advisers with respect to communications currently subject to the existing recordkeeping requirements.

Under the baseline, there are no recordkeeping requirements for the communications of solicitors, except for the disclosure documents that solicitors are required to provide to clients pursuant to the current solicitation rule. Investment advisers that currently use solicitors will incur additional costs associated with the substantive changes to the final recordkeeping requirements discussed in this section, as well as the expansion of the definition of advertisement to include testimonials and endorsements. In addition, given that the recordkeeping obligations fall upon investment advisers and not their promoters, we do not anticipate this provision will generate substantial costs or benefits for promoters.

We have quantified a subset of the costs associated with the recordkeeping provisions, specifically, the burden of information collection costs estimated for the purposes of the Paperwork Reduction Act. The amendments to the recordkeeping requirements will cause

[961] *See* final rule 204–2(a)(11)(i)(A)(*1*).

[962] *See* final rule 204–2(a)(11)(i)(A)(*2*).

[963] *See* final rule 204–2(a)(11)(i)(A) and (15)(i).

[964] *See* rule 204–2(a)(16); *See* Great Lakes Letter (not recommending enforcement action and stating the staff's view that the requirement in rule 204–2(a)(16) applies to a successor's use of a predecessor's performance data).

investment advisers to incur annual ongoing costs related to the creation and retention of records. We estimate these costs to have a total cost of $16,636,198 per year.[965]

*E. Efficiency, Competition, Capital Formation*

We believe the final amendments could have positive effects on efficiency, competition, and capital formation. As discussed below, we expect the amendments could improve efficiency by improving the quantity and quality of information in advertisements. Further, if investors are thereby able to make more informed decisions about investment advisers and more easily learn about the ability and potential fit of investment advisers, investment advisers might have a stronger incentive to invest in the quality of their services, which could promote increased competition among investment advisers. However, if advertisements attract customers for investment advisers in a manner unrelated to the quality of their services, competition among investment advertisers could result in an inefficient ''arms race.'' To the extent that the final rule results in improved matches in the market for investment advice, potential investors may be drawn to invest additional capital, which could promote capital formation.

1. Efficiency

The final rules have the potential to improve the information in investment adviser advertisements by improving the quantity and quality of information available to investors. This in turn could improve the efficiency of the market for investment advice in two ways.

First, the final rule could increase the overall amount of information in investment adviser advertisements by increasing the types of information that investment advisers include in their advertisements and prescribing requirements and restrictions on the presentation of certain kinds of information in adviser and private fund advertisements. This could either be directly through the provisions of the rule, or indirectly, through competition among investment advisers on how informative their advertisements are. For example, to the extent that the rules and rescission of existing no-action letters increase certainty for advisers and thereby reduce compliance costs, advisers may increase their use of the types of marketing activities covered by the final rules. This may increase investor access to information regarding the ability and potential fit of investment advisers, which may improve the quality of the matches that investors make with investment advisers. In addition, advertisements can improve the efficiency of the investment adviser search process through the investor protections and disclosures that the final rule will provide. On the other hand, investment advisers, promoters, and related personnel may reduce the overall amount of information in these communications, because of the expanded definition of an advertisement and related costs imposed on communications newly brought within the definition, which could reduce the overall efficiency of an investor's investment adviser search.

The information from testimonials, endorsements, performance data, and third-party ratings presented in accordance with the provisions of the rule can potentially provide valuable information for investors. Better informed investors could improve the efficiency of the market for investment advice by improving the matches between investors and investment advisers and reducing search costs, as they may be better able to evaluate investment advisers based on the information in their advertisements.[966] To the extent that the rule improves the usefulness of the recommendations of non-cash compensated promoters, another programmatic benefit of the rule is that it may improve the efficiency of matches between investment advisers and investors.

Although the final rule requires additional disclosures when investment advisers include certain elements in their advertisements, the value of these disclosures to investors depends on the extent to which investors are able to utilize the disclosures to better understand the context of an adviser's claims. By providing information to investors in the required disclosures to aid their evaluation of an adviser's advertisements, these disclosures could mitigate the potential that advertisements mislead investors, and improve their ability to find the right investment adviser for their needs.

Second, the final rule could increase the overall quality of information about investment advisers. To the extent that the rules mitigate misleading or fraudulent advertising practices, investors may be more likely to believe the claims of investment adviser advertisements. Because information in advertisements is more likely to increase the number of investors interested in an investment adviser, advisers may include more information that will improve the choices of investors. One potential consequence of modifying the regulatory standards for advertisements provided by the final rule is that investment advisers may increase the amount of resources they allocate to advertising their services (including resources aimed to address compliance with the final rule). While additional spending on advertisements may facilitate matching between investment advisers and investors, under some circumstances, this additional spending may be inefficient if the benefits of better matches fall short of the resources required to facilitate better matches.

The final rule also merges certain solicitation activity into the definitions of testimonials and endorsements and expands the scope by covering all forms of compensation. The rule also includes persons providing testimonials or endorsements to investors in a private fund. In addition, the rule will continue to require disclosures to make salient the nature of the relationship between a promoter and the investment advisers. These provisions could improve the efficiency of the market for promoters and their investment advisers by ensuring that the provisions for testimonials and endorsements apply to all forms of potential conflicts of interest. If investors are aware of these conflicts of interest through disclosures, they may be better able to interpret testimonials and endorsements and choose an investment adviser that is of higher quality, or a better match.

2. Competition

As discussed earlier, the final rule might result in an increase in the efficiency of investment adviser advertisements, providing more useful information to investors about the abilities of an investment adviser than advertisements under the baseline, which would allow them to make better decisions about which investment advisers to choose.[967] In this case, if investors make more informed decisions about investment advisers based on the content of their advertisements, investment advisers might have a stronger incentive to invest in the quality of their services, as the final rule will permit them more flexibility to communicate the higher quality of their services by providing additional information about their services. This could promote competition among investment advisers based on the

[965] *See infra* section IV.D.

[966] *See supra* section III.B.

[967] *See supra* section III.B.

quality of their services, and result in a benefit for investors.

However, the final rule might instead provide investment advisers with a stronger incentive to invest in the quality of their advertisements rather than the quality of their services. If investment advisers increase spending on advertisements in a way that does not improve the information quality in advertisements, but still attracts investors, the competition could potentially be inefficient. Although the direct costs of advertisements would be borne by the investment adviser, it is possible that some portion of the costs of advertisement will be indirectly borne by investors.[968] As a result, investments in advertisements may result in higher fees for investors.

The final rule has conditions that can affect market participants in different ways. For example, the final rule's restriction on the presentation of performance results unless results for one, five, and ten year periods are presented does not restrict the presentation of performance of private funds. This could give investment advisers that are able to advertise both private funds and general funds more options in how they advertise performance, and provide them a competitive advantage over investment advisers that only advertise non-fund performance. Further, to the extent that advisers increase their usage of compensated testimonials or endorsements as a result of the final rule, this could provide competitive advantages to advisers who are better able to pay fees for such testimonials or endorsements, or for larger firms who have larger audiences with which to leverage favorable testimonials and endorsements.[969] In addition, provisions for different types of performance advertising can have a disparate impact on newer investment advisers versus older ones. Generally, newer investment advisers have fewer performance advertising options and shorter performance histories than older investment advisers, and might prefer to rely on hypothetical or related performance advertising. To the extent that the final rule's provisions place different requirements on these types of performance, newer investment advisers could face competitive disadvantages relative to older investment advisers.

In addition, the final rule affects current solicitors by including non-cash compensation in the scope of the rule's requirements for testimonials and endorsements. The final rule could improve competition among investment advisers and solicitors by subjecting all forms of compensation for testimonials and endorsements to the same requirements, and not imposing a higher regulatory burden on solicitors compensated in cash and their respective investment advisers do not receive a higher regulatory burden. Under the final rule, providers of testimonials or endorsements that prefer or accept cash compensation for their activities will not be subject to a higher burden relative to persons that prefer or accept non-cash compensation. In addition, non-cash compensated promoters will bear additional costs associated with being scoped into the marketing rule. We expect that some portion of these costs will be passed onto investors through higher fees.

Differences in the scope of disqualification between investment advisers subject to the disqualification provisions in this final rule, broker-dealers, and promoters of private funds under Regulation D may create competitive disparities in the personnel that are available to provide testimonials or endorsements. Investment advisers that operate as broker-dealers or advise private funds might have more flexibility to use personnel that might be disqualified from providing testimonials or endorsements under the final rule, but are not disqualified under section 3(a)(39) of the Exchange Act for broker-dealers or Regulation D for advisers of private funds. This flexibility could impose an uneven burden on investment advisers, as those that are also registered as broker-dealers or broker-dealer affiliates, or advise private funds, will potentially able to draw upon a larger pool of personnel to provide testimonials or endorsements.

3. Capital Formation

To the extent that the final rule results in improved matches in the market for investment advice, potential investors may be drawn to invest additional capital, which could promote capital formation, to the extent that the additional capital does not reduce other forms of capital formation. However, the final rule could induce some investment advisers to increase their advertising such that the additional expenses of advertising may offset any gains to the quality of matches with investors.[970] In this case, any benefits to capital formation as a result of the final rule could be reduced or eliminated.

Similarly, if the costs associated with the disclosure, oversight, and recordkeeping requirements of the final rule result in a reduction of advertisements, the information available to investors might decrease. This could decrease the quality of matches between investors and investment advisers, leading investors to divert capital away from investment to other uses, hindering capital formation.

The final rule's expansion of the types of compensation subject to solicitor regulation for providers of testimonials or endorsements might improve the efficiency of the ultimate choice of investment adviser that investors make. Improving the efficiency of the investment adviser selection process could improve the efficiency of the investing overall for investors, which may lead them to devote more capital towards investment. In addition, the final rule expands the set of disqualifying events that would bar an adviser from compensating an individual to provide a testimonial or endorsement, which may improve an investor's confidence in a testimonial or endorsement's recommendation of an investment adviser, which, in turn, could lead investors to allocate more of their resources towards investment, thus promoting capital formation.

*F. Reasonable Alternatives*

1. Reduce or Eliminate Specific Limitations on Investment Adviser Advertisements

We could change the degree to which the marketing rule relies on specific limitations on investment adviser marketing. One alternative to the marketing rule would be reducing or eliminating specific limitations on investment adviser advertising, and instead relying on general prohibitions to achieve the programmatic benefits of the rule. For example, such an alternative might include reducing or eliminating the specific limitations on the different types of hypothetical performance or testimonials and endorsements. The specific prohibitions of the final rule are prophylactic in nature, and many of the advertising practices described in the specific prohibitions would also be prohibited under the general prohibition on fraud

[968] Firms that face a change in costs will bear some portion of these costs directly, but will also pass a portion of the cost to their consumers through the price. In a competitive market, the portion of these costs that firms are able to pass on to consumers depends on the relative elasticities of supply and demand. For example, if demand for investment adviser services is elastic relative to supply of investment adviser services, investment advisers will be limited in their ability to pass through costs. For more, *see* Mankiw, Gregory, *Principles of Economics* (2017).

[969] *See* NAPFA Comment Letter.

[970] *See supra* sections III.E.1 and III.E.2.

and deceit in section 206 of the Act, among other provisions.[971]

As a consequence, advisers might bear greater compliance costs in interpreting the rule or may otherwise restrict their advertising activities unnecessarily, and may reduce their advertising as a result. Alternatively, advisers may face lower compliance costs associated with the specific prohibitions. In addition, under such an approach, investors may also not obtain some of the benefits associated with the final rule. For example, in the absence of a specific advertising rule, investors would not necessarily obtain the benefits associated with the comparability of performance presentations provided in the proposed rule, or the requirement to provide performance over a variety of periods (except in private fund advertisements) so that an investor may sufficiently evaluate the adviser's performance. Investors would also not benefit from the specific protections against the potential for misleading hypothetical performance contained in the final rule, such as the requirement to have policies and procedures designed to ensure that such performance is relevant to the likely financial situation and investment objectives of the investor and includes sufficient disclosures to enable persons receiving it to understand how it is calculated and the risks and limitations of relying on it. Although some advisers might provide such information, even in the absence of the final specific requirements to help ensure that their performance presentations comply with section 206 of the Act or other applicable anti-fraud provisions, others may not. As a consequence, this approach may benefit certain advisers by allowing them to avoid the costs of the specific requirements of the final rule, but investors would not receive the benefit of the other protections of the rule.

One variation of this alternative would be to eliminate the marketing rule and instead rely solely on the general prohibitions against fraud or deceit in section 206 of the Advisers Act and certain rules thereunder. Under such an approach, a rule specifically targeting adviser advertising practices might be unnecessary. In the absence of a marketing rule, however, an adviser might have not sufficient clarity and guidance on whether certain advertising practices would likely be fraudulent and deceptive. As a consequence, advisers may bear costs in obtaining such guidance or may otherwise restrict their advertising activities unnecessarily in the absence of such clarity and guidance that would be provided through a rule, and may reduce their advertising as a result.

Conversely, another alternative to the marketing rule would be to make the rule more prescriptive, prescribing certain specific and standardized disclosures in lieu of the principles-based approach of the final rule. On the one hand, such an approach may provide investors with disclosures that may be more comparable across advisers, and ease the costs associated with interpretation and compliance. However, standardized disclosures could both impose costs on investment advisers by requiring disclosures when they might not provide much investor protection benefit, and also not require disclosures when an investor might benefit from one. The broad framework of the final rule is designed to permit investment advisers to tailor their disclosures to their specific marketing practices, subject to certain specific requirements.

A related alternative to the final rule would be to align the marketing rule more closely with FINRA rule 2210 and related rules. FINRA rule 2210 governs broker-dealers' communications with the public, including communications with retail and institutional investors, and provides standards for the content, approval, recordkeeping, and filing of communications with FINRA.[972] To the extent that such an alternative resembles Rule 2210, this alternative might impose lower compliance cost burdens for dual-registrants who are subject to Rule 2210 and related rules than under the final rule. However, as discussed above, standardized disclosures for investment advisers could be over- or under-inclusive given the variety of investment advisory services and advertising practices associated with investment advisers, and we believe that the final rule's approach of providing advisers' with a broad framework within which to determine how best to present advertisements so they are not false and misleading is consistent with the features of the market for investment advice.[973] Further, because FINRA rule 2210 does not contain similar provisions to all of the requirements of the final rule, this alternative would not have offered the same investor protections of the final rule. For example, FINRA rule 2210 does not contain a similar provision to the final rule's requirement to disclose compensation for a solicitation or referral or for the conflict of interest that results.[974]

2. Bifurcate Some Requirements

One alternative to the final rule would be to separate requirements of the originally proposed rule that currently apply to all advertisements. For example, one alternative approach to regulation that we considered is prohibiting hypothetical performance in advertisements to retail investors, but not others, provided that certain disclosures were made.

Evidence from academic research suggests that investors are highly segmented in their financial literacy and access to resources.[975] The fact that certain market segments are susceptible to misconduct suggests that the lack of financial literacy or access to resources may also leave them susceptible to false or misleading statements in advertisements or solicitations.

Tailoring requirements to suit the segmented nature of the market for investment advice may yield benefits to investor protection for investors with lower financial literacy or access to resources, as advertisements directed towards these specific market segments vulnerable to misleading statements would face additional requirements. Similarly, advertisements not directed towards those segments would benefit from additional flexibility and information contained in these advertisements. However, bifurcating the requirements in the final rule might also impose additional costs on investment advisers, who may need to expend additional resources to create advertisements that complied with two increasingly different sets of requirements.

[971] For anti-fraud provisions applicable to the marketing of private funds, *see* Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, rule 10b–5, and rule 206(4)–8 under the Advisers Act.

[972] *See supra* section III.C.1.b.

[973] *See supra* footnote 279 and accompanying text for a discussion of comments we received on this point.

[974] See *supra* section II.C.5.c.

[975] *See* Financial Literacy Study, *supra* footnote 846. *See also* Mark Egan, Gregor Matvos and Amit Seru, The Market for Financial Adviser Misconduct, 127 J. Pol. Econ. 233 (2019). The paper uses the term ''financial advisors,'' to refer to broker-dealer representatives. The authors argue that broker-dealer representatives target different groups of investors and that this segmentation permits firms with high tolerance for misconduct on the part of their associated persons to coexist with firms maintaining clean records in the current market. They find that misconduct is more common among firms that advise retail investors, and in counties with low education, elderly populations and high incomes (when controlling for other characteristics).

3. Hypothetical Performance Alternatives

One alternative to the final rule's treatment of hypothetical performance would be to prohibit all forms of hypothetical performance in all advertisements. The Commission considered this alternative because it believes hypothetical performance generally presents a high risk of misleading investors. This alternative would eliminate the possibility that investors are misled by hypothetical performance, but also eliminates the possibility that investors might gain useful information from some types of hypothetical information. This additional information might have been useful for improving the quality of the matches that investors make with investment advisers. While a prohibition on hypothetical performance might improve the efficiency of investment adviser advertising by reducing the chance that investors are misled by advertisements, efficiency can also be reduced if investors are less able to receive relevant information about the investment adviser.

Conversely, another alternative would be to permit all hypothetical performance in all advertisements, without any additional requirements. This could increase the relevant hypothetical performance that reaches investors. While such statements would still be subject to the final rule's general prohibitions, we believe that this approach would still pose a high risk that hypothetical performance would mislead investors. This approach would lack the final rule's protections that are designed to help ensure that hypothetical performance is disseminated to investors who have access to the resources to independently analyze this information and who have the financial expertise to understand the risks and limitations of these types of presentations.

4. Alternatives to the Combined Marketing Rule

In the proposal, we also considered retaining separate advertising and solicitation rules and instead updating and clarifying each rule separately. However, in the proposal the advertising rule was expanded to permit advertisements containing testimonials and endorsements, subject to certain requirements, which had the potential to subject promoters and solicitors to duplicative requirements from both the advertising and the solicitation rule. These duplicative requirements would have imposed additional costs to promoters and their investment advisers, and potentially decreased the usefulness of the disclosures made to investors.

We also considered the alternative of not applying the final amended merged marketing rule to the solicitation of existing and prospective private fund investors. Under this alternative, the rule would apply only to the adviser's clients (including prospective clients), which, in the case of funds, are the private funds themselves, and would not apply to investors in private funds. However, while investors in private funds may often be financially sophisticated, they may not be aware that the person engaging in the solicitation activity may be compensated by the adviser or aware of the other disclosure items that we are requiring, and we believe investors in such funds should be informed of that fact, those disclosure items and the related conflicts. In addition, we believe that the application of the final merged marketing rule to investors in private funds is consistent with the portions of the rule that concern investment adviser advertising. This consistency could avoid any competitive disparities between investment advisers that advise private funds and those that do not, and reduce the costs that investment advisers bear, by potentially removing costs associated with identifying whether the target of a communication is a private fund investor or not. We believe that harmonizing the scope of the merged rule with the advertising portions of the rule to the extent possible should ease compliance burdens.

5. Alternatives to Disqualification Provisions

We also considered an alternative to current rule 206(4)–3 wherein the disqualification provisions of the rule would not apply if the solicitor has performed solicitation activities for the investment adviser during the preceding twelve months and the investment adviser's compensation payable to the solicitor for those solicitation activities was $1,000 or less (or the equivalent value in non-cash compensation). We considered the alternative of not having any *de minimis* exemption in the proposal, which would expand the set of individuals for whom the investment adviser would need to assess for disqualification, potentially extending the costs and benefits of the proposed solicitation rule to these solicitation activities, we believe the solicitor's incentives to defraud an investor are significantly reduced when receiving *de minimis* compensation, and that the need for heightened safeguards is likewise reduced.

Conversely, we also considered the alternative of adopting a higher threshold for a *de minimis* exemption. However, we believe that an aggregate $1,000 *de minimis* amount over a trailing year period is consistent with our goal of providing an exception for small or nominal payments. Regarding the trailing period, we understand that a very engaged solicitor who is paid even a small amount per referral could potentially receive a significant amount of compensation from an adviser over time even if the solicitor receives less than $1,000 per year. Over multiple years, such an investment adviser's compensation could accumulate to a more significant amount. In such a case we believe that investors should be informed of the conflict of interest and gain the benefit of the other provisions of the rule.

## IV. Paperwork Reduction Act Analysis

### *A. Introduction*

Certain provisions of our rule amendments will result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[976] The rule amendments will have an impact on the current collection of information burdens of rule 204–2 under the Investment Advisers Act (''the Act'') and Form ADV. The title of the new collection of information we are proposing is ''Rule 206(4)–1 under the Investment Advisers Act.'' The Office of Management and Budget (''OMB'') has not yet assigned a control number for ''Rule 206(4)–1 under the Investment Advisers Act.'' The titles for the existing collections of information that we are amending are: (i) ''Rule 206(4)–3 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)–3)'' (OMB number 3235–0242); (ii) ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB control number 3235–0278); and (iii) ''Form ADV'' (OMB control number 3235–0049). The Commission is submitting these collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We published notice soliciting comments on the collection of information requirements in the 2019 Proposing Release and submitted the

[976] 44 U.S.C. 3501 *et seq.*

proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Although we received no comments directly on the proposed collections of information burdens, we did receive three comments on aspects of the economic analysis that implicated estimates we used to calculate the collection of information burdens. Two commenters generally stated that advisers would disseminate new advertisements and update existing advertisements much more frequently than estimated in our proposal, due to the proposed expanded definition of advertisement.[977] Two other commenters suggested that our assumptions underestimated the amount of time and costs required to implement the proposed amendments to the advertising and solicitation rules.[978] We address these comments below.

We discuss below the new collection of information burdens associated with the amendments to rule 206(4)–1, as well as the revised existing collection of information burdens associated with the amendments to rule 204–2 and Form ADV. There will no longer be a collection of information burden with respect to rule 206(4)–3 because we are rescinding this rule. Responses provided to the Commission in the context of its examination and oversight program concerning the amendments to rule 206(4)–1 and rule 204–2 will be kept confidential subject to the provisions of applicable law. However, because some of the information collection pursuant to rule 206(4)–1 requires disclosures to investors, these disclosures will not be kept confidential. Responses to the disclosure requirements of the amendments to Form ADV, which are filed with the Commission, are not kept confidential.

*B. Rule 206(4)–1*

The marketing rule states that, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it is unlawful for any investment adviser registered or required to be registered under section 203 of the of the Act, directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of the rule, which include the rule's general prohibitions, as well as conditions applicable to an adviser's use of testimonials, endorsements, third-party ratings, and performance information.[979]

Each requirement under the final rule that an adviser disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA. The respondents to these collections of information requirements will be investment advisers that are registered or required to be registered with the Commission. As of August 1, 2020, there were 13,724 investment advisers registered with the Commission.[980] Investment adviser marketing is not mandatory; however: (i) Marketing is an essential part of retaining and attracting clients; (ii) marketing may be conducted easily through the internet and social media; and (iii) the definition of ''advertisement'' expands the scope of the advertising rule. Accordingly, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of ''advertisement'' and therefore be subject to the requirements of the marketing rule.

While commenters claimed that our assumptions in the proposal significantly underestimated the scope of communications that would constitute an advertisement under the proposed amendment to the advertising rule, we made several modifications versus the proposal that will reduce the amount of communications subject to the rule to address commenters' concerns.[981] For example, the marketing rule will exclude certain one-on-one communications from the first prong of the definition and communications to current clients that do not offer new or additional advisory services. These changes from the proposal will significantly reduce the scope of communications subject to the marketing rule.

Because the use of testimonials, endorsements, third-party ratings, and performance results in advertisements is voluntary, the percentage of investment advisers that would include these items in an advertisement is uncertain. However, we have made certain estimates of this data, as discussed below, solely for the purpose of this PRA analysis.

1. General Prohibitions

The general prohibitions under the rule do not create a collection of information and are, therefore, not discussed, with one exception. The final rule will prohibit advertisements that include a material statement of fact that the adviser does not have a reasonable basis for believing that it will be able to substantiate upon demand by the Commission. As discussed above, advisers would be able to demonstrate this reasonable belief in a number of ways.[982] For example, they could make a record contemporaneous with the advertisement demonstrating the basis for their belief. An adviser might also choose to implement policies and procedures to address how this requirement is met. This will create a collection of information burden within the meaning of the PRA.

As stated above, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of ''advertisement'' and therefore be subject to the requirements of the marketing rule. We also estimate that such advertisements will include at least one statement of material fact that will be subject to this general prohibition, for which an adviser will create and/or maintain a record documenting its reasonable belief that it can substantiate the statement. This estimate reflects that many types of statements typically included in an advertisement (*e.g.* performance) can likely be substantiated by other records that an adviser will be required to create and maintain under the final rule.[983] Table 1 summarizes the final PRA estimates for the internal and external burdens associated with this requirement.

[977] Fidelity Comment Letter; IAA Comment Letter.

[978] MFA/AIMA Comment Letter I.

[979] Final rule 206(4)–1(b), (c).

[980] *See supra* section III.C.1.c.

[981] *See* MFA/AIMA Comment Letter I; Fidelity Comment Letter.

[982] *See supra* section II.B.2.

[983] *See supra* section II.B.2.

## Table 1: General Prohibitions

| | Internal Hour Burden | | Wage Rate[1] | Internal Time Costs | Annual External Cost Burden |
|---|---|---|---|---|---|
| FINAL ESTIMATES FOR RULE 204-1 FOR GENERAL PROHIBITIONS | | | | | |
| Determine whether statements in an advertisement are material facts | 0.5 | × | $309 (compliance manager) | $156 | |
| | 0.5 | × | $365 (compliance attorney) | $183 | |
| Creation and maintenance of records substantiating material facts in any advertisements | 4 | × | $62 (general clerk) | $248 | |
| | 1 | × | $70 (compliance clerk) | $70 | |
| Total burden per adviser | 6 | | | $657 | |
| Total number of affected advisers | × 13,724 | | | × 13,724 | |
| **Total burden for general prohibitions** | **82,344 hours** | | | **$9,016,668** | |

**Notes:**
1. *See* SIFMA Report, *supra* footnotes 1041 & 1045.

2. Testimonials and Endorsements in Advertisements

Under the marketing rule, investment advisers are prohibited from including in any advertisement, or providing any compensation for, any testimonial or endorsement unless the adviser discloses, or the investment adviser reasonably believes that the person giving the testimonial or endorsement discloses: (i) Clearly and prominently: (A) That the testimonial was given by a current client or investor, or the endorsement was given by a person other than a current client or investor; (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and (C) a brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person; (ii) the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and (iii) a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.[984] The rule also imposes an oversight obligation that requires that an investment adviser have a reasonable basis to believe that the testimonial or endorsement complies with the marketing rule and have a written agreement with the person giving a testimonial or endorsement (except for certain affiliated persons of the adviser) that describes the scope of the agreed upon activities and the terms of the compensation for those activities when making payments for compensated testimonials and endorsements that are above the *de minimis* threshold.[985] This collection of information consists of two components: (i) The requirement to disclose certain information in connection with the testimonial and endorsement, and (ii) the requirement to oversee the testimonial or endorsement, including a written agreement with certain persons giving the testimonial or endorsement.

The final rule's definitions of testimonials and endorsements generally contain three elements: (i) Statements about the client's/non-client's or investor's experience with the investment adviser or its supervised persons, (ii) statements that directly or indirectly solicit any prospective client or investor in a private fund for the investment adviser, or (iii) statements that refer any prospective client or investor in a private fund to the investment adviser. The first element is drawn from the definitions of these terms in our proposed advertising rule. The second and third elements are drawn from the scope of our proposed solicitation rule.[986] Accordingly, our PRA analysis will be drawn from our proposed estimates and discussion of both proposed rules in the 2019 Proposing Release.[987]

In our advertising rule proposal, from which the first element of these definitions is drawn, we estimated that 50 percent of advisers would include a testimonial or endorsement under the proposed advertising rule. We also estimated in our advertising proposal that an investment adviser that includes testimonials or endorsements in advertisements would use approximately 5 testimonials or endorsements per year, and would create new advertisements with new or updated testimonials and endorsements approximately once per year. In the solicitation rule proposal, from which elements two and three of the definitions are drawn, we estimated that 47.8 percent of advisers would compensate a solicitor for solicitation activity under the proposed solicitation rule.[988] We also estimated in our proposal that for each registered investment adviser that would conduct solicitation activity, they would use approximately 30 referrals annually, distributed by an average of three solicitors. We did not receive comment on any of these estimates.

We are revising our estimates from the advertising rule proposal to account for the merger of solicitation concepts into the definitions of testimonial and endorsement. We continue to estimate that 50 percent of advisers will use a testimonial or endorsement; however,

[984] Final rule 206(4)–1(b)(1).

[985] *Id.*

[986] *Id.*

[987] *See* 2019 Proposing Release, *supra* footnote 7, at section IV.

[988] *See* 2019 Proposing Release, *supra* footnote 7, at section IV.

we are increasing our estimate of the amount of testimonials and estimates each adviser will use to reflect the definitions' inclusion of solicitation concepts.[989] Accordingly, we estimate that each adviser will use an average of five promoters and use 35 testimonials or endorsements annually, which includes testimonials and endorsements incorporated into an adviser's own advertisement and those communicated by promoters directly. This estimate also reflects the elimination of the proposed exemptions for solicitations for impersonal advisory services or by non-profit referral programs, as well as the addition of the final rule's exemptions for registered broker-dealers and ''covered persons'' under rule 506(d) of Regulation D.

Under the marketing rule, an adviser that uses a testimonial or endorsement will be required to disclose certain information at the time it is disseminated, which incorporates many of the disclosure elements required under the proposed solicitation rule. As such, we are drawing from the burden estimate we attributed to solicitation disclosures in the 2019 Proposing Release in developing the burden estimate for *all* testimonials and endorsements under the final rule, not just for the types of testimonials and endorsements that were drawn from the proposed rule. To address one commenter's contention that we underestimated this burden, and recognizing the changes from the proposal, we are revising this estimate upwards to 0.20 hours per disclosure.[990] We believe that advisers will incur this same burden each year, since each testimonial and/or endorsement used will likely be different and thus require updated disclosures. An investment adviser's in-house compliance managers and compliance attorneys will likely prepare disclosures, which will likely be included in the advertisement.[991]

Some of these third-party testimonials and endorsements will require delivery; thus, we estimate that 20 percent of the disclosures would be delivered by the U.S. Postal Service, with the remaining 80 percent delivered electronically or as part of another delivery of documents. For the 20% of advisers that will use physical mail, we estimate that the average annual costs associated with printing and mailing this information will be collectively $500 for all disclosure documents associated with a single registered investment adviser.[992]

We estimate the average burden hours each year per adviser to oversee testimonials and endorsements will be one hour for each promoter, or five hours in total for each adviser that is subject to this collection of information.[993] While the final rule provides flexibility as to how advisers conduct this oversight, we generally believe that this burden will include contacting solicited clients, pre-reviewing testimonials or endorsements, or other similar methods. Additionally, we estimate that each adviser will incur an average burden hour of one hour for each promoter, or five hours in total, to prepare the required written agreements. In-house compliance managers and compliance attorneys are likely to provide oversight of the third party testimonials and endorsements and prepare the written agreements.

Finally, in response to one commenter who argued that we did not account for upfront implementation costs for using testimonials and endorsements, we estimate that each adviser that uses a compensated testimonial or endorsement will incur an initial burden of two hours to modify its policies and procedures to reflect the adviser's oversight of testimonials and endorsements.[994] We believe that an adviser's chief compliance officer will complete this task.[995] Table 2 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

[990] MFA/AIMA Comment Letter I.

[991] We estimate the hourly wage rate for compliance manager is $309 and a compliance attorney is $337. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[992] We do not have specific data regarding how the cost of printing and mailing the underlying information would differ, nor are we able to specifically identify how the cost of printing and mailing the underlying information might be affected by the rule. For these reasons, we estimate $500 per year to collectively print and mail, upon request, the underlying information associated with hypothetical performance for purposes of our analysis. In addition, investors may also request to receive the underlying information electronically. We estimate that there would be negligible external costs associated with emailing electronic copies of the underlying information.

[993] This estimate is based on the following calculation: 1 hour per each solicitor relationship × 5 promoter relationships. Although in our proposal we estimated that the oversight requirement would impose a burden of 2 hours per adviser, we believe that because the marketing rule does not require a written agreement, the burden to oversee the promoter relationship will be less than proposed.

[994] MFA/AIMA Comment Letter I. Accordingly, the amortized average burden will be 0.67 hours for each of the first 3 years.

[995] We estimate that the hourly wage for a chief compliance officer is $530. The hourly wage is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

## Table 2: Testimonials and Endorsements

| | Internal Hour Burden | | Wage Rate[1] | Internal Time Costs | Annual External Cost Burden |
|---|---|---|---|---|---|
| FINAL ESTIMATES FOR TESTIMONIALS AND ENDORSEMENTS | | | | | |
| Modify policies and procedures[2] | 0.67 hours | × | $530 (chief compliance officer) | $355.10 | |
| Revise and update each required disclosure | 0.1 hours × 35 disclosures | × | $309 (compliance manager) | $1,081.50 | -- |
| | 0.1 hours × 35 disclosures | × | $365 (compliance attorney) | $1,277.50 | |
| Oversight of compensated testimonials and endorsements and preparation of written agreements | 1 hours × 5 promoters | × | $309 (compliance manager) | $1,545 | |
| | 1 hours × 5 promoters | × | $365 (compliance attorney) | $1,825 | |
| Total burden per adviser | 17.67 hours | | | $6,084.1 | $500 |
| Total number of affected advisers | × 6,862 | | | × 6,862 | × 6,862 (× 20% of advisers that will use physical mail ) |
| **Total burden for testimonials and endorsements** | **121,252 hours** | | | **$1,749,094** | **$686,200** |

Notes:
1. *See* SIFMA Report, *supra* footnotes 1041 & 1045.
2. Amortized over a three year period.

3. Third-Party Ratings in Advertisements

As discussed above, rule 206(4)–1(c) will prohibit an investment adviser from including a third-party rating in an advertisement unless certain conditions are met, including that the adviser must clearly and prominently disclose (or reasonably believe that the third-party rating clearly and prominently discloses): (i) The date on which the rating was given and the period of time upon which the rating was based, (ii) the identity of the third-party that created and tabulated the rating, and (iii) if applicable, that cash or non-cash compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

As discussed in the advertising rule proposal, we continue to believe that approximately 50 percent of advisers will use third-party ratings in advertisements, and that they will typically use one third-party rating on an annual basis. We believe that advisers will incur an initial internal burden of 3.0 hours to draft and finalize the required disclosures for third-party ratings, which we are adjusting upwards from 1.5 hours in the advertising rule proposal to address one commenter's concern that we underestimated this burden.[996] As discussed in the advertising rule proposal, because many of these ratings or rankings are done yearly *(e.g.,* 2018 Top Wealth Adviser), we continue to estimate that an adviser that continues to use a third-party rating will incur ongoing, annual costs of 0.75 burden hours to draft the third-party rating disclosure updates.[997] Table 3 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

[996] *See* MFA/AIMA Comment Letter I. Accordingly, we estimate that the amortized average burden will be 1 hour for each of the first 3 years for each investment adviser to comply with the conditions for including third-party ratings in an advertisement (3.0 hours/3 years = 1 hour). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager.

[997] We believe that this burden will also be split evenly between an adviser's compliance attorney and compliance manager.

## Table 3: Third-Party Ratings

| | Internal Hour Burden[1] | | Wage Rate[2] | Internal Time Costs | Annual External Cost Burden |
|---|---|---|---|---|---|
| FINAL ESTIMATES FOR THIRD PARTY RATINGS | | | | | |
| Draft initial disclosures[1] | 0.5 hours | | $309 (compliance manager) | $154.50 | |
| | 0.5 hours | | $365 (compliance attorney) | $182.50 | |
| Update required disclosures | 0.375 hours | × | $309 (compliance manager) | $115.88 | |
| | 0.375 hours | × | $365 (compliance attorney) | $136.88 | |
| Total burden per adviser | 1.75 hours | | | $589.76 | |
| Total number of affected advisers | × 6,862 | | | × 6,862 | |
| **Total burden for third-party ratings** | **12,009 hours** | | | **$4,046,933** | |

Notes:
1. Amortized over a three-year period.
2. See SIFMA Report, *supra* footnotes 1041 & 1045.

4. Performance Advertising

The marketing rule will impose certain conditions on the presentation of performance results in advertisements, as discussed above. Below we discuss the conditions that create ''collection of information'' requirements within the meaning of the PRA. First, the rule will prohibit any presentation of gross performance unless the advertisement also presents net performance that meets certain criteria.[998] Second, the rule will prohibit any presentation of performance results of any portfolio or any composite aggregation of related portfolios, other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.[999] Third, the rule will prohibit an advertisement from including related performance, unless it includes all related portfolios, subject to a conditional exception.[1000] Fourth, the rule will prohibit an advertisement from including extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.[1001] Fifth, the rule will also prohibit an advertisement from including predecessor performance, unless certain conditions are satisfied.[1002] Finally, the rule will require that an adviser that advertises hypothetical performance: (i) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provide reasonably sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provide (or, if the intended audience is an investor in a private fund provide, or offers to provide promptly) reasonably sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

We estimate that almost all advisers provide, or seek to provide, performance information to their clients. Based on staff experience, we estimate that 95 percent, or 13,038 advisers, provide performance information in their advertisements. The estimated numbers of burden hours and costs regarding performance results in advertisements may vary depending on, among other things, the complexity of the calculations, the type of performance and the risks that investors may not understand the limitations of the information, and whether preparation of the disclosures is performed by internal staff or outside counsel.

a. Presentation of Net Performance in Advertisements

We estimate that an investment adviser that elects to present gross performance in an advertisement will incur an initial burden of 15 hours in preparing net performance for each portfolio, including the time spent determining and deducting the relevant fees and expenses to apply in calculating the net performance and then actually running the calculations.[1003] We have adjusted this estimate upwards from the proposal to reflect one commenter's claim that we underestimated this burden in the proposal.[1004] Based on staff experience, we estimate that the average investment adviser will present performance for 3 portfolios over the course of a year, excluding any related portfolios that an adviser may need to include for purposes of presenting related performance.[1005] As noted above, we estimate that 95 percent, or 13,038 advisers, provide performance information in their advertisements and

[998] Final rule 206(4)–1(d).
[999] *Id.* at (d)(2).
[1000] *Id.* at (d)(4).
[1001] *Id.* at (d)(5).
[1002] *Id.* at (d)(7).
[1003] Accordingly, we estimate that the amortized initial burden will be 5 hours for each of the first 3 years for each investment adviser to prepare net performance (15 hours/3 years = 5 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (2.5 hours each).
[1004] *See* MFA/AIMA Comment Letter I.
[1005] The burden associated with calculating net performance in connection with presenting related performance is discussed in section IV.B.3.c. below.

thus will be subject to this collection of information burden.

We expect that the calculation of net performance may be modified every time an adviser chooses to update the advertised performance. We estimate that after initially preparing net performance for each portfolio, investment advisers will incur a burden of 3 hours to update the net performance for each subsequent presentation. Again, we adjusted this estimate upwards from the proposal to reflect one commenter's claim that we underestimated this burden in the analysis.[1006] For purposes of this analysis, we estimate that advisers will update the relevant performance of each portfolio 3.5 times each year.[1007]

b. Time Period Requirement in Advertisements

We estimate that an investment adviser that elects to present performance results in an advertisement will incur an initial burden of 35 hours in preparing performance results of the same portfolio for one-, five-, and ten-year periods (excluding private funds), taking into account that these results must be prepared on a net basis (and may also be prepared and presented on a gross basis).[1008] We estimate that after initially preparing one-, five-, and ten-year performance for each portfolio, investment advisers will incur a burden of 8 hours to update the performance for these time periods for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance 3.5 times each year.[1009] We received no comments on these estimates and continue to believe they are appropriate.

c. Related Performance

We estimate that an investment adviser that elects to present related performance in an advertisement will incur an initial burden of 30 hours, with respect to each advertised portfolio or composite aggregation of portfolios, in preparing the relevant performance of all related portfolios.[1010] We have revised this estimate upwards to address one commenter's claim that we underestimated this time burden in the proposal.[1011] This time burden will include the adviser's time spent classifying which portfolios meet the rule's definition of ''related portfolio''—*i.e.,* which portfolios have ''substantially similar investment policies, objectives, and strategies as those of the services offered in the advertisement.'' [1012] This burden also will include time spent determining whether to exclude any related portfolios in accordance with the rule's provision allowing exclusion of one or more related portfolios if ''the advertised performance results are not materially higher than if all related portfolios had been included'' and ''the exclusion of any related portfolio does not alter the presentation of the time periods prescribed by paragraph (d)(2).'' [1013] Finally, this time burden will include the adviser's time calculating and presenting the net performance of any related performance presented.

We continue to estimate that 80 percent of advisers (or 10,979 advisers) will have other portfolios with substantially similar investment policies, objectives, and strategies as those offered in the advertisement and choose to include related performance. We estimate that after initially preparing related performance for each portfolio or composite aggregation of portfolios, investment advisers will incur a burden of 5 hours to update the performance for each subsequent presentation. Although we expect that advisers might update their performance fewer times per year than we had proposed because the final rule permits performance to be shown as of the most recent calendar year end, we continue to estimate that advisers will update the relevant related performance 3.5 times each year.[1014] We received no comments on these estimates and continue to believe they are appropriate.

d. Extracted Performance

As in the advertising rule proposal, we estimate that an investment adviser that elects to present extracted performance in an advertisement will incur an initial burden of 10 hours in preparing the performance results of the total portfolio from which the performance is extracted in order to provide or offer to provide such performance results to investors.[1015] For purposes of this analysis, we continue to assume 5 percent of advisers will include extracted performance. We estimate that after initially preparing the performance of the total portfolio from which extracted performance is extracted, investment advisers will incur a burden of 2 hours to update the performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant total portfolio performance 3.5 times each year.[1016] We also estimate that registered investment advisers may incur external costs in connection with the requirement to provide performance results of a total portfolio from which extracted hypothetical performance is extracted. We estimate that the average annual costs associated with printing and mailing this information upon request will be collectively $500 for all documents associated with a single registered investment adviser. We received no comments on these estimates and continue to believe they are appropriate.

e. Hypothetical Performance

We estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 7 hours in preparing and adopting policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement.[1017] We

[1006] *See* MFA/AIMA Comment Letter I.

[1007] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours × 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

[1008] Accordingly, we estimate that the amortized initial burden will be 11.67 hours for each of the first 3 years for each investment adviser to prepare performance results that comply with this requirement (35 hours/3 years = 11.67 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5.83 hours each).

[1009] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (8 hours × 3.5 times per year = 28 hours; 28 hours/2 = 14 hours each).

[1010] Accordingly, we estimate that the amortized initial burden will be 10 hours for each of the first 3 years for each investment adviser to prepare related performance in connection with this requirement (30 hours/3 years = 10 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours each).

[1011] *See* MFA/AIMA Comment Letter I.

[1012] *See* final rule 206(4)–1(e)(16). Our estimate accounts for advisers that may already be familiar with any composites that meet the definition of ''related portfolio.''

[1013] *See* final rule 206(4)–1(d)(4).

[1014] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours × 3.5 times per year = 17.5 hours; 17.5 hours/2 = 8.75 hours each).

[1015] Accordingly, we estimate that the amortized initial burden will be 3.33 hours for each of the first 3 years for each investment adviser to prepare the performance of the total portfolio from which the presentation of extracted performance is extracted (10 hours/3 years = 3.33 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1.67 hours each).

[1016] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (2 hours × 3.5 times per year = 7 hours; 7 hours/2 = 3.5 hours each).

[1017] Accordingly, we estimate that the amortized initial burden will be 2.33 hours for each of the first 3 years for each investment adviser to comply with

have revised this estimate upwards from the advertising rule proposal to address one commenter's claim that we underestimated this time burden.[1018] For purposes of this analysis, we continue to estimate that 50 percent of advisers will include hypothetical performance in advertisements.

We continue to estimate that advisers that use hypothetical performance will disseminate advertisements containing hypothetical performance 20 times each year, including in certain one-on-one communications that meet the final rule's definition of advertisement. We estimate that after adopting appropriate policies and procedures, an adviser will incur a burden of 0.25 hours to categorize investors according to their likely financial situation and investment objectives pursuant to the adviser's policies and procedures.[1019]

Additionally, we estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 20 hours in preparing the information sufficient to understand the criteria used and assumptions made in calculating, as well as risks and limitations in using, the hypothetical performance, in order to provide such information, which may in certain circumstances be upon request.[1020] We have also revised this estimate upwards from the proposal to address one commenter's claim that we underestimated this time burden.[1021] We estimate that after initially preparing the underlying information, investment advisers will incur a burden of 3 hours to update the information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update their hypothetical performance, and thus the underlying information, 3.5 times each year.[1022]

We estimate that registered investment advisers may incur external costs in connection with the requirement to provide this underlying information upon the request of an investor or prospective investor in a private fund. We estimate that the average annual costs associated with printing and mailing this underlying information upon request will be collectively $500 for all documents associated with a single registered investment adviser.[1023]

f. Predecessor Performance

The final rule will impose conditions on an adviser's use of predecessor performance. We estimate that an investment adviser that elects to present predecessor performance in an advertisement will incur an initial burden of 10 hours in preparing the relevant performance results and associated disclosures.[1024] This time burden will include the adviser's time spent classifying which performance results are eligible to be ported—*i.e.,* to determine whether accounts at a predecessor adviser are ''sufficiently similar'' and the persons are ''primarily responsible'' for the performance, or that the relevant algorithm was responsible for achieving the prior performance results.[1025] This burden also will include time spent determining whether to exclude any account in accordance with the rule's provision allowing exclusion of one or more accounts if the advertised performance results ''would not result in materially higher performance.'' Finally, this time burden will include the adviser's time calculating and presenting the net performance and appropriate time periods of any predecessor performance presented.

We estimate that 2% of advisers (or 275 advisers) will include predecessor performance in an advertisement. We estimate that after initially preparing predecessor performance, investment advisers will incur a burden of 1 hour to update the relevant disclosures and performance information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant disclosures 3.5 times each year.[1026] Table 4 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

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this requirement (7 hours/3 years = 2.33 hours/year). We believe that an adviser's chief compliance officer will complete this task.

[1018] *See* MFA/AIMA Comment Letter I.

[1019] We believe that an adviser's chief compliance officer will complete this task (20 presentations per year × 0.25 hours each = 5 hours per year).

[1020] Accordingly, we estimate that the amortized initial burden will be 6.67 hours for each of the first 3 years for each investment adviser to comply with this requirement (20 hours/3 years = 6.67 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3.33 hours each). This estimate includes the time spent by an adviser in preparing the information. The time spent calculating the hypothetical performance that is based on such information is not accounted for in this estimate, as the rule does not require that an advertisement present hypothetical performance.

[1021] *See* MFA/AIMA Comment Letter I.

[1022] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours × 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

[1023] *See supra* footnote 992 for a discussion of estimated mailing costs.

[1024] Accordingly, we estimate that the amortized initial burden will be 3.33 hours for each of the first 3 years for each investment adviser to prepare predecessor performance in connection with this requirement (10 hours/3 years = 3.33 hours/year). We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1.67 hours each).

[1025] Final rule 206(4)–1(d)(7)(i)–(ii).

[1026] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1 hour × 3.5 times per year = 3.5 hours; 3.5 hours/2 = 1.75 hours each).

## Table 4: Performance

| | Internal Hour Burden | | Wage Rate[2] | Internal Time Costs | Annual External Cost Burden |
|---|---|---|---|---|---|
| FINAL ESTIMATES FOR NET PERFORMANCE | | | | | |
| Initial performance calculations[1] | 2.5 | × | $309 (compliance manager) | $772.5 | |
| | 2.5 | × | $365 (compliance attorney) | $912.5 | |
| Updating performance | 5.25 | × | $309 (compliance manager) | $1,622.25 | |
| | 5.25 | × | $365 (compliance attorney) | $1,916.25 | |
| Total burden per adviser | 15.5 | | | $5,223.50 | |
| Total number of affected advisers | × 13,038 | | | × 13,038 | |
| **Sub-total burden** | **202,089 hours** | | | **$68,103,993** | |
| FINAL ESTIMATES FOR PERFORMANCE TIME PERIOD REQUIREMENT | | | | | |
| Initial performance calculations[1] | 5.83 | × | $309 (compliance manager) | $1,801.47 | |
| | 5.83 | × | $365 (compliance attorney) | $2,127.95 | |
| Updating performance | 14 | × | $309 (compliance manager) | $4,326 | |
| | 14 | × | $365 (compliance attorney) | $5,110 | |
| Total burden per adviser | 39.7 | | | $13,365.42 | |
| Total number of affected advisers | × 13,038 | | | × 13,038 | |
| **Sub-total burden** | **517,608.6 hours** | | | **$174,258,346** | |
| FINAL ESTIMATES FOR RELATED PERFORMANCE | | | | | |
| Preparing initial performance for all related portfolios[1] | 5 | × | $309 (compliance manager) | $1,545 | |
| | 5 | × | $365 (compliance attorney) | $1,825 | |
| Updating performance for all related portfolios | 8.75 | × | $309 (compliance manager) | $2,703.75 | |
| | 8.75 | × | $365 (compliance attorney) | $3,139.75 | |
| Total burden per adviser | 27.5 | | | $9,267.50 | |
| Total number of affected advisers | × 10,979 | | | × 10,979 | |
| **Sub-total burden** | **301,922.5 hours** | | | **$101,747,882.50** | |
| FINAL ESTIMATES FOR EXTRACTED PERFORMANCE | | | | | |
| Initial performance calculations[1] | 1.67 | × | $309 (compliance manager) | $516.03 | |
| | 1.67 | × | $365 (compliance attorney) | $609.55 | |
| Updating performance | 3.5 | × | $309 (compliance manager) | $1,081.50 | |
| | 3.5 | × | $365 (compliance attorney) | $1,277.50 | |

| | | | | | |
|---|---|---|---|---|---|
| Total burden per adviser | 10.3 | | | $3,484.58 | $500 |
| Total number of affected advisers | × 686 | | | × 686 | × 686 |
| **Sub-total burden** | **7,065.8 hours** | | | **$2,390,421.90** | $343,000 |
| FINAL ESTIMATES FOR HYPOTHETICAL PERFORMANCE | | | | | |
| Initially adopting and implementing policies and procedures[1] | 2.33 | × | $530 (chief compliance officer) | $1,234.90 | |
| Updating policies and procedures | 5 | × | $530 (chief compliance officer) | $2,650 | |
| Initially preparing disclosures and underlying information[1] | 3.33 | × | $309 (compliance manager) | $1,028.97 | |
| | 3.33 | × | $365 (compliance attorney) | $1,215.45 | |
| Updating disclosures and underlying information | 5.25 | × | $309 (compliance manager) | $1,622.25 | |
| | 5.25 | × | $365 (compliance attorney) | $1,916.25 | |
| Total burden per adviser | 24.5 | | | $9,667.82 | $500 |
| Total number of affected advisers | × 6,862 | | | × 6,862 | X 6,862 |
| **Sub-total burden** | **168,119 hours** | | | **$66,340,581** | $3,431,000 |
| FINAL ESTIMATES FOR PREDECESSOR PERFORMANCE | | | | | |
| Initially determining performance that is eligible to be ported, draft disclosures, and calculate performance[1] | 1.67 | × | $309 (compliance manager) | $516.03 | |
| | 1.67 | × | $365 (compliance attorney) | $609.55 | |
| Updating disclosures and performance | 1.75 | × | $309 (compliance manager) | $540.75 | |
| | 1.75 | × | $365 (compliance attorney) | $638.75 | |
| Total burden per adviser | 6.84 | | | $2,305.08 | |
| Total number of affected advisers | × 275 | | | × 275 | |
| **Sub-total burden** | **1,881 hours** | | | **$633,897** | |
| TOTAL ESTIMATED TIME BURDEN FOR PERFORMANCE REQUIREMENTS | | | | | |
| | **1,198,686 hours** | | | **$413,475,121** | **$3,774,000** |

**Notes:**
1. Amortized over a three-year period.
2. *See* SIFMA Report, *supra* footnotes 1041 & 1045.

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5. Total Hour Burden Associated With Rule 206(4)–1

Accordingly, we estimate the total annual hour burden for investment advisers registered or required to be registered with the Commission under proposed rule 206(4)-1 to prepare testimonials and endorsements, third-party ratings, and performance results disclosures will be 1,414,291 hours, at a time cost of $468,287,816. The total external burden costs would be $4,460,200. The following chart summarizes the various components of the total annual burden for investment advisers.

| | Internal hour burden | Internal burden time cost | External cost burden |
|---|---|---|---|
| General Prohibitions | 82,344 hours | $9,016,668 | ..... |
| Testimonials and Endorsements | 121,252 hours | $41,749,094 | $686,200 |
| Third-Party Ratings | 12,009 hours | 4,046,933 | ..... |
| Performance | 1,198,686 hours | 413,475,121 | 3,774,000 |
| Total annual burden | 1,414,291 hours | 468,287,121 | 4,460,200 |

*C. Rule 206(4)–3*

Rule 206(4)–3 (OMB number 3235–0242) currently prohibits investment advisers from paying cash fees to solicitors for client referrals unless certain conditions are met. As discussed above, we are rescinding rule 206(4)–3 and merging some of its components into the combined marketing rule. The collection of information burden associated with the requirements of rule 206(4)–3 has been incorporated into the collection of information burden for rule 206(4)–1. There will no longer be a collection of information burden associated with rule 206(4)–3.

*D. Rule 204–2*

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. As noted above, responses provided to the Commission in the context of its examination and oversight program concerning the amendments to rule 204–2 will be kept confidential subject to the provisions of applicable law.

We are amending rule 204–2 to require investment advisers to retain copies of all advertisements.[1027] The current rule requires investment advisers to retain copies of advertisements to 10 or more persons.[1028] For oral advertisements, amended rule 204–2 provides that an adviser may instead retain a copy of any written or recorded materials used by the adviser in connection with the oral advertisement.[1029] For compensated oral testimonials and endorsements, the adviser may instead make and keep a record of the disclosures provided to clients or investors required by the final rule.[1030] We are also amending the rule to require investment advisers to retain: (i) Documentation of communications relating to predecessor performance; (ii) copies of all information provided or offered pursuant to the marketing rule's conditions on advertising hypothetical performance; and (iii) records of who the ''intended audience'' relating to the conditions of hypothetical performance. The amendments will not require an adviser to maintain copies of written approvals of advertisements, since we are not adopting the proposed requirement that an adviser review and approve advertisements before dissemination.

Amended rule 204–2 will require registered investment advisers to maintain a copy of any questionnaire or survey used in preparation of the third-party rating. Advisers must also make and retain: (i) A record of the disclosures provided to clients or investors pursuant to the marketing rule, if not included in the advertisement, (ii) documentation related to the adviser's determination that it has a reasonable basis for believing that a testimonial, endorsement, or third-party rating complies with the applicable conditions of the marketing rule, and (iii) a record of all affiliated personnel of the adviser.[1031] Each of these records will be required to be maintained in the same manner, and for the same period of time, as other books and records required to be maintained under rule 204–2(a). Specifically, investment advisers will be required to maintain and preserve these records in an easily accessible place for not less than 5 years from the end of the fiscal year during which the last entry was made on such record, the first 2 years in an appropriate office of the investment adviser. Requiring maintenance of these records will facilitate the Commission's ability to inspect and enforce compliance with the marketing rule.[1032] The information generally is kept confidential subject to the applicable law.[1033]

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. The use of advertisements is not mandatory, but as discussed above, we estimate that 100 percent of investment advisers will disseminate at least one communication meeting the rule's definition of ''advertisement'' (including oral advertisements) and therefore be subject to the requirements of the rule. The Commission therefore estimates that, based on Form ADV filings as of August 1, 2020, approximately 13,724 investment advisers will be subject to the proposed amendments to rule 204–2 under the Advisers Act.

Based on staff experience, we estimate that 95 percent of advisers (or 13,038 advisers) provide, or seek to provide, performance information to their clients.[1034] The amendments to the recordkeeping rule will require advisers to maintain communications to clients or investors that contain performance calculations of portfolios, in addition to those that reference performance of managed accounts and securities recommendations as currently required. We believe based on staff experience that advisers already have recordkeeping processes in place to maintain client communications; however, this amendment will expand the types of communications subject to the recordkeeping rule and thus increase this collection of information burden.

The amendments will require advisers to maintain copies of any documents provided or offered to clients or investors explaining the assumptions and criteria underlying the hypothetical performance calculation and the risks and limitations in using hypothetical performance. In addition, the amendments will require advisers to create and maintain a record of who the ''intended audience'' is in connection with its advertisements that include hypothetical performance. We estimate that approximately 50 percent of advisers (or 6,862 advisers) will use hypothetical performance in an advertisement and therefore be subject to the expanded recordkeeping obligations relating to the retention of documents that support those performance calculations. The recordkeeping rule will also require advisers that present predecessor performance to maintain sufficient records to support the performance results provided. As discussed above, we estimate that 2% of advisers (or 275 advisers) will present predecessor performance thus be subject to this collection of information burden.

The rule will require advisers that use a testimonial or endorsement to create and maintain a record of the names of all affiliated personnel of the adviser and documentation substantiating the adviser's reasonable basis for believing that the testimonial or endorsement complies with the specific conditions of the marketing rule. As discussed above,

[1027] *See* final rule 204–2(a)(11); *see also supra* section II.I (discussing the amendments to the books and records rule).

[1028] Rule 204–2(a)(11).

[1029] *See* final rule 204–2(a)(11)(i)(A)(*1*).

[1030] *See id.*

[1031] *See* final rule 204–2(a)(15)(i)–(ii).

[1032] *Id.*

[1033] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

[1034] *See* 2016 Form ADV Amendments Release, *supra* footnote 249 at 149.

we estimate that 50 percent of advisers (or 6,862 advisers) will use a testimonial or endorsement.

In addition, we estimate that approximately 50 percent of advisers (or 6,862 advisers) will use third-party ratings in advertisements, and will therefore also be subject to the recordkeeping amendments corresponding to the rule's conditions relating to the use of third-party ratings. These amendments require that an adviser: (i) Retain a copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement, and (ii) make and retain documentation substantiating the investment adviser's reasonable basis for believing that the third-party rating complies with the specific conditions of the marketing rule.[1035] In a change from the proposal, the marketing rule does not require advisers to obtain the questionnaire or survey to satisfy the specific conditions for third-party ratings; instead, advisers can comply with the conditions for third-party ratings by other means (which will not trigger a recordkeeping obligation). Accordingly, we estimate that approximately 50 percent of the investment advisers that will use a third-party rating, or 3,431 advisers, will comply with the third-party ratings conditions of the rule by obtaining the underlying questionnaire or survey.

For the recordkeeping amendments relating to testimonials and endorsements, we estimate that the amendments will result in a collection of information burden estimate of 5 hours for each of the estimated 6,862 advisers that will use a testimonial or endorsement. We are revising this estimate upwards versus the proposal to reflect the additional recordkeeping obligations we are adopting, such as the requirement to create documentation of the adviser's reasonable belief that the testimonial or endorsement complies with the specific conditions of the marketing rule.

We also estimate the amendments will result in a collection of information burden of 3 hours for the 50 percent of advisers (or 6,862 advisers) that we estimate will use third-party ratings. Again, we have revised this estimate upwards from the proposal to reflect the additional obligations imposed by the amended recordkeeping rule, such as the requirement to create documentation of the adviser's reasonable belief that the third-party rating complies with the specific conditions of the marketing rule. Table 5 summarizes the final PRA estimates for the internal and external burdens associated with these requirements.

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[1035] *See supra* section III.B.2.

## Table 5: Rule 204-2

| | Internal Hour Burden | | Wage Rate[1] | Internal Time Costs | Annual External Cost Burden |
|---|---|---|---|---|---|
| FINAL ESTIMATES FOR RULE 204-2 FOR ADVERTISING RETENTION AND PERFORMANCE | | | | | |
| Retention of advertisements | 8 | × | $62 (general clerk) | $496 | |
| | 2 | × | $70 (compliance clerk) | $140 | |
| Total burden per adviser | 10 | | | $636 | |
| Total number of affected advisers | × 13,724 | | | × 13,724 | |
| **Sub-total burden** | **137,240 hours** | | | **$8,728,464** | |
| Retention of communications containing performance results | **2** | × | $62 (general clerk) | $124 | |
| | **1** | × | $70 (compliance clerk) | $70 | |
| Total burden per adviser | 3 | | | $194 | |
| Total number of affected advisers | × 13,038 | | | × 13,038 | |
| **Sub-total burden** | **39,114 hours** | | | **$2,529,372** | |
| **Retention of documentation relating to hypothetical performance and record of intended audience** | **2** | × | $62 (general clerk) | $124 | |
| | **1** | × | $70 (compliance clerk) | $70 | |
| Total burden per adviser | 3 | | | $194 | |
| Total number of affected advisers | × 6,862 | | | × 6,862 | |
| **Sub-total burden** | **20,586 hours** | | | **$1,331,228** | |
| **Retention of documentation relating to predecessor performance** | **2** | × | $62 (general clerk) | $124 | |
| | **1** | × | $70 (compliance clerk) | $70 | |
| Total burden per adviser | 3 | | | $194 | |
| Total number of affected advisers | × 275 | | | × 275 | |
| **Sub-total burden** | **825 hours** | | | **$53,350** | |
| FINAL ESTIMATES FOR RULE 204-2 FOR TESTIMONIALS AND ENDORSEMENTS | | | | | |
| Creation and retention of records documenting adviser's reasonable belief, disclosures not included in an advertisement, and list of affiliates | 4 | × | $62 (general clerk) | $248 | |
| | 1 | × | $70 (compliance clerk) | $70 | |
| Total burden per adviser | 5 | | | $318 | |
| Total number of affected advisers | × 6,862 | | | × 6,862 | |

| | | | | |
|---|---|---|---|---|
| **Sub-total burden** | **34,310 hours** | | | **$2,182,216** |
| FINAL ESTIMATES FOR RULE 204-2 FOR THIRD-PARTY RATINGS | | | | |
| Creation and retention of records documenting adviser's reasonable belief and list of affiliates | 2 | × | $62 (general clerk) | $124 |
| | 1 | × | $70 (compliance clerk) | $140 |
| Total burden per adviser | 3 | | | $264 |
| Total number of affected advisers | × 6,862 | | | × 6,862 |
| **Sub-total burden** | **20,586 hours** | | | **$1,811,568** |
| TOTAL ESTIMATED FINAL BURDEN FOR RULE 204-2 | | | | |
| **Total burden** | **252,661 hours** | | | **$16,636,198** |

**Notes:**
1. *See* SIFMA Report, *supra* footnotes 1041 & 1045.

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As noted above, the approved annual aggregate burden for rule 204–2 is currently 2,435,364 hours, based on an estimate of 13,299 registered advisers, or 183 hours per registered adviser, with a total monetized costs of $154,304,664.[1036] We therefore estimate that the amendments to the recordkeeping rule will result in an aggregate increase in the collection of information burden estimate by 18.44 hours for each of the estimated 13,724 registered advisers, resulting in a total of 201.44 hours per adviser.[1037] This would yield an annual estimated aggregate burden of 2,764,563 hours under amended rule 204–2 for all registered advisers,[1038] for a monetized cost of $175,980,426.[1039] This represents in an increase of 329,199 [1040] annual aggregate hours in the hour burden and an annual increase of $21,675,762 from the currently approved total aggregate monetized cost for rule 204–2.[1041] These increases are attributable to a larger registered investment adviser population since the most recent approval and adjustments for inflation, as well as the rule 204–2 amendments relating to the new marketing rule. The following chart shows the differences from the approved annual hourly burden for the current books and records rule.

| Requirement | Estimated burden increase or decrease | Brief explanation |
|---|---|---|
| All collections of information under rule 204–2 (including new requirements). | 18.44 hour increase. ..... The overall hour burden per adviser would increase from 183 hours to 201.44 hours. | The currently approved burden reflects the current rule's requirement that investment advisers retain copies of advertisements to 10 or more persons. The amended rule will require that they retain copies of all advertisements, as well as copies of any questionnaires or surveys obtained in connection with third-party ratings in advertisements. The amended rule will also require that advisers that use testimonials, endorsements, or third-party ratings make and retain a record documenting that the adviser has a reasonable belief that these items comply with the applicable conditions of the marketing rule. |

*E. Form ADV*

Form ADV (OMB Control No. 3235–0049) is the investment adviser registration form under the Advisers Act. Rule 203–1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission (''exempt reporting advisers'') to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204–1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through IARD. On June 5, 2019, the Commission adopted amendments to Form ADV and related rules under the Act to add new Form ADV Part 3: Form CRS (relationship summary) requiring certain registered investment advisers to prepare and file a relationship summary for retail investors.

The paperwork burdens associated with rules 203–1, 204–1, and 204–4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. These collections of information are found at 17 CFR 275.203–1, 275.204–1, 275.204–4 and 279.1 (Form ADV itself) and are mandatory. Responses are not kept confidential. We are adopting amendments to Form ADV to add a

[1036] 2,435,364 hours/13,299 registered advisers = 183 hours per adviser.

[1037] 10 hours (advertising retention) + 3 hours (performance retention) × 95% + 3 hours (hypothetical performance) × 50% + 3 hours (predecessor performance) × 2% + 5 hours (testimonials and endorsements) x 50% + 3 hours (third-party ratings) × 50% = 18.44 hours.

[1038] 13,724 registered investment advisers × 201.44 hours = 2,764,563 hours.

[1039] $16,636,198/252,661 hours = $65.84/hour for these amendments; $65.84/hour × 329,199 hours = $21,675,762. $21,675,762 + $154,304,664 = $175,980,426.

[1040] 2,764,563 hours – 2,435,364 hours = 329,199 hours.

[1041] $175,980,426 – $154,304,664 = $21,675,762.

subsection L to Item 5 of Part 1A (''Marketing Activities'') to require information about an adviser's use in its advertisements of testimonials, endorsements, third-party ratings, and previous investment advice. Specifically, we will require an adviser to state whether any of its advertisements include performance results, hypothetical performance, or predecessor performance. We will also require an adviser to state whether any of its advertisements includes testimonials, endorsements, or a third-party rating, and if so, whether the adviser pays or otherwise provides cash or non-cash compensation, directly or indirectly, in connection with their use. Finally, we will require an adviser to state whether any of its advertisements includes a reference to specific investment advice provided by the adviser.

The collection of information is necessary to improve information available to us and to the general public about advisers' advertising practices. Our staff will use this information to help prepare for examinations of investment advisers. This information will be particularly useful for staff in reviewing an adviser's compliance with the marketing rule, including the restrictions and conditions on advisers' use in advertisements of performance presentations and third-party statements. We are not proposing amendments to Form ADV Parts 2 or 3.

1. Respondents

The respondents to current Form ADV are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers.[1042] Based on the IARD system data as of August 1, 2020, approximately 13,724 investment advisers were registered with the Commission, and 4,455 exempt reporting advisers file reports with the Commission. The amendments to Form ADV will increase the information requested in Form ADV Part 1A for registered investment advisers. Because exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV, which excludes Item 5, they will not be subject to these amendments and will therefore not be subject to this collection of information.[1043] However, these exempt reporting advisers are included in the PRA for purposes of updating the overall Form ADV information collection. In addition, as noted above, in 2019 the Commission adopted amendments to Form ADV to add a new Part 3, requiring registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary.[1044] The burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection.[1045]

The currently approved burdens for Form ADV are set forth below:[1046]

| | RIAs not obligated to prepare and file relationship summaries | RIAs obligated to prepare and file relationship summaries | Exempt reporting advisers | All advisers |
|---|---|---|---|---|
| Number of advisers included in the currently approved burden. | 5,064 + 571 expected newly registered RIAs annually. | 8,235 + 656 expected newly registered RIAs annually. | 4,280 + 441 expected new ERAs annually. | 17,597 advisers + 1,740 expected new RIAs and ERAs annually. |
| Currently approved total annual hour estimate per adviser. | 29.22 hours | 37.47 hours | 3.60 hours | 29.28 annual blended average hours per adviser. |
| Currently approved aggregate annual hour burden. | 164,655 hours | 333,146 hours | 16,996 hours | 514,797 hours. |
| Currently approved aggregate monetized cost. | $44,950,816 | $90,978,858 | $4,639,908 | $140,569,582. |

Based on updated IARD system data as of August 1, 2020, we estimate that the number of registered investment advisers that are required to complete, amend, and file Form ADV (Part 1 and Part 2) with the Commission, but who are not obligated to prepare and file relationship summaries as of the applicable compliance date for Form ADV Part 3, is 5,506, and we also continue to believe, based on IARD system data, that that 1,227 new advisers will register with us annually, 571 of which will not be required to prepare a relationship summary.[1047] Based on updated IARD system data as of August 1, 2020, we estimate that the number of registered investment advisers that are required to complete, amend, and file Form ADV (Part 1 and Part 2) *and* prepare and file relationship summaries is 8,218, and we continue to believe, based on IARD system data, that that 1,227 new advisers will register with us annually, 656 of which will be required to prepare a relationship summary.[1048] Based on updated IARD system data as of August 1, 2020, we estimate that the number of exempt reporting advisers is 4,455; however, we continue to believe that, based on IARD system data, there would be 441 new exempt reporting advisers annually.[1049]

2. Estimated New Annual Hour Burden for Advisers

As a result of the proposed amendments to Form ADV Part 1A discussed above, we estimate that the average total annual collection of information burden for registered investment advisers that are not obligated to prepare and file relationship summaries will increase 0.5 hours to 29.72 hours per registered

[1042] An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds or 203(m) of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million.

[1043] An exempt reporting adviser is not a registered investment adviser and therefore will not be subject to the amendments to Item 5 of Form ADV Part 1A. Exempt reporting advisers are required to complete a limited number of items in Form ADV Part 1A (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules), and are not required to complete Part 2.

[1044] *See* Form CRS Relationship Summary; Amendments to Form ADV, Release No. IA–5247 (June 5, 2019) [84 FR 33492 (Jul. 12, 2019)].

[1045] *See* Updated Supporting Statement for PRA Submission for Amendments to Form ADV Under the Investment Advisers Act of 1940 (the ''Approved Form ADV PRA'').

[1046] The information in the following table is from the Approved Form ADV PRA, *id.*

[1047] As of August 1, 2020, there are 13,724 registered investment advisers, 8,218 of which file a Form CRS. *See also* Approved Form ADV PRA, *id.,* at text accompanying nn.55–56 (''[W]e estimate that 1,227 new advisers will register with us annually, 656 of which will be required to prepare a relationship summary.'')

[1048] *See id.*

[1049] *Id.,* at n.42.

investment adviser per year for Form ADV. We estimate that the average total annual collection of information burden for registered investment advisers who *are* obligated to prepare and file relationship summaries will increase 0.5 hour to 38.97 hours per registered investment adviser per year for Form ADV. We do not expect that the amendments will increase or decrease the currently approved total burden estimate of 3.60 per exempt reporting adviser completing Form ADV. We are not modifying our estimates from the proposal. Although one commenter claimed that we underestimated the Form ADV burden, this commenter mischaracterized our statements in the proposal.[1050] We stated in the proposal that the Form ADV amendments would not increase the time required to complete the form for *exempt reporting advisers* (not registered investment advisers), which we continue to believe is the case.

The currently approved annual aggregate burden for Form ADV for all registered advisers and exempt reporting advisers is 514,797 hours, for a monetized cost of $140,569,582.[1051] This is an annual blended average per adviser burden for Form ADV of 29.28 hours, and $7,996 per adviser.[1052] Factoring in the new questions on Part 1 of Form ADV that will be required for all registered investment advisers (but not for exempt reporting advisers), and increases due to increased number in RIAs since the burden estimate was last approved (but a decreased number in ERAs), the revised annual aggregate burden hours for Form ADV (Parts 1, 2 and 3) for all registered advisers and exempt reporting advisers will be 544,053 hours per year, with a monetized value of $148,526,578.[1053] This will be an aggregate increase of 29,256 hours, or $7,956,996 in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates, increases which are attributed to the factors described above.

Estimated new annual hour burden for advisers:

| | RIAs not obligated to prepare and file relationship summaries | RIAs obligated to prepare and file relationship summaries | Exempt reporting advisers | All advisers |
|---|---|---|---|---|
| Number of advisers to be included in the final burden. | 5,506 + 571 expected newly registered RIAs annually. | 8,218 + 656 expected newly registered RIAs annually. | 4,455 + 441 expected new ERAs annually. | |
| Final total annual hour estimate per adviser. | 29.72 | 38.97 | 3.60 hours | |
| Final aggregate burden hours. | 180,608 hours | 345,819.8 hours | 17,625.6 hours | 544,053.4 hours. |
| Final aggregate monetized cost. | $49,306,104 | $94,408,800 | $4,811,789 | $148,526,578. |

## V. 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'').[1054] It relates to: (i) Final amendments to rule 206(4)–1 under the Investment Advisers Act; (ii) final amendments to rule 204–2, and (iii) final amendments to Form ADV Part 1A.

### *A. Reason for and Objectives of the Final Amendments*

1. Final Rule 206(4)–1

We are adopting amendments to rule 206(4)–1 (now known as the ''marketing rule''), which we adopted in 1961 to target advertising practices that the Commission believed were likely to be misleading. We are also incorporating into rule 206(4)–1 certain aspects of rule 206(4)–3 (previously referred to as the ''cash solicitation rule''), which we adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest. We are accordingly eliminating rule 206(4)–3.

As discussed above, we are adopting amendments to rule 206(4)–1 to impose: (i) General prohibitions of certain advertising practices applicable to all advertisements; (ii) tailored restrictions or conditions on specific practices applicable to testimonials, endorsements, and third-party ratings; and (iii) tailored requirements for the presentation of performance results, including predecessor performance. The final rule is designed to restrict or place conditions on specific practices we believe may cause investors to be misled without appropriate conditions or limitations. The final rule will also include a new definition of ''advertisement'' that is intended to be flexible enough to remain relevant and effective in the face of advances in technology and evolving industry practices. The reasons for, and objectives of, the final amendments are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in section IV.

We believe that our final amendments are appropriate and in the public interest and will improve investor protection. We are adopting amendments to the current rule because while we believe that the concerns that motivated the Commission to adopt rule 206(4)–1 and 206(4)–3 still exist today, we also believe that we can achieve our regulatory goals in a more tailored manner. We believe that our final amendments will update the rule's coverage to reflect regulatory changes and evolution of industry practices, improve the quality of disclosures to investors, and streamline elements of the rules our 40 years of experience has

[1050] In the proposal, we estimated that the amendments would not change the burden for exempt reporting advisers because they will not be required to complete the new portion of Form ADV.

[1051] *Id.,* at nn.44–45 and accompanying text,

[1052] *Id.,* at nn.46–47 and accompanying text.

[1053] 544,053.4 aggregate annual hour burden is the sum of: ((i) 29.72 hours × (5,506 RIAs + 571 expected newly registered RIAs annually) = 180,608 total aggregate annual hour burden for RIAs not obligated to prepare and file relationship summaries; (ii) 38.97 hours × (8,218 + 656 expected newly registered RIAs annually) = 345,819.8 total aggregate annual hour burden for RIAs not obligated to prepare and file relationship summaries; (iii) 3.60 hours × (4,455 + 441 expected new ERAs annually) = 17,625.6 total aggregate annual hour burden for ERAs). We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively, with a blended rate of $273. Therefore: 544,053.4 hours × $273 = $148,526,578.

[1054] 5 U.S.C. 603(a).

suggested may no longer be necessary for investor protection.

2. Final Rule 204–2

We are also adopting related amendments to rule 204–2, the books and records rule, which sets forth requirements for maintaining, making, and retaining advertisements. We are amending the rule to require investment advisers to make and keep records of all advertisements they disseminate. In addition, we are adopting the provisions to the books and records rule that will explicitly require investment advisers: (i) That use third-party ratings in an advertisement to record and keep a copy of any questionnaire or survey used in the preparation of the third-party rating; and (ii) to maintain documentation of communications relating to predecessor performance and to support performance calculations. We are also adopting the recordkeeping requirement that corresponds to the amendments related to testimonials, endorsements, and third-party ratings under the final rule such that advisers must retain: (i) If not included in the advertisement, a record of the disclosures provided to clients or investors pursuant to final rule 206(4)–1; (ii) documentation substantiating the adviser's reasonable basis for believing that the testimonial or endorsement complies with the final rule and that the third-party rating complies with the final rule 206(4)–1(c)(1); and (iii) a record of the names of all persons who are an investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person.

As discussed above, we are adopting these amendments to rule 204–2 to: (i) Conform the books and records rule to the final rule; (ii) help ensure that an investment adviser retains records of all its advertisements; and (iii) facilitate the Commission's inspection and enforcement capabilities. The reasons for and objectives of, the final amendments to the books and records rule are discussed in more detail in section II.I above. The burdens of these requirements on small advisers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in Section IV.

3. Final Amendments to Form ADV

We are also adopting amendments to Item 5 of Part 1A of Form ADV to improve information available to us and to the general public about advisers' advertising practices. We will be adding a subsection L (''Marketing Activities'') to require information about an adviser's use in its advertisements of performance results, its previous investment advice, testimonials, endorsements, and third-party ratings.

Specifically, we will require an adviser to state whether any of its advertisements includes testimonials, endorsements, or a third-party rating, and if so, whether the adviser pays cash or non-cash compensation, directly or indirectly, in connection with their use. We will also require an adviser to state whether any of its advertisements includes performance results or a reference to specific investment advice provided by the adviser. Finally, we will require an adviser to state whether any of its advertisements include hypothetical or predecessor performance. Our staff will use this information to help prepare for examinations of investment advisers. This information will be particularly useful for staff in reviewing an adviser's compliance with the final rule, including the restrictions and conditions on advisers' use in advertisements of performance presentations, testimonials and endorsements, and third-party ratings. The reasons for and objectives of, the final amendments to Form ADV are discussed in more detail in section II.A.8 above. The burdens of these requirements on small advisers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in Section IV.

*B. Significant Issues Raised by Public Comments*

In the 2019 Proposing Release, we requested comment on the matters discussed in the IRFA, including the number of small entities subject to the proposed amendments to rules 206(4)–1, 206(4)–3, and 204–2, and Form ADV, as well as the potential impacts discussed in this analysis; and whether the proposal could have an effect on small entities that has not been considered. We requested that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact. In addition, we included in the proposal a ''Feedback Flyer'' as Appendix C thereto. The ''Feedback Flyer'' solicited feedback from smaller advisers on the effects on small entities subject to our proposal, and the estimated compliance burdens of our proposal and how they would affect small entities.

After consideration of the comments we received on the proposed rules and amendments, we are adopting the amendments with several modifications that are designed to reduce certain operational challenges that commenters identified, while maintaining protections for investors and providing investors with useful and important disclosures. However, none of the modifications was significant to the small-entity cost burden estimates discussed below. Revisions to the estimates are instead based on updated figures regarding the number of small entities affected by the new rule and amendments and updated estimated wage rates.

*C. Legal Basis*

The Commission is adopting amendments to rule 206(4)–1 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a) and 211(h) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is adopting amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is adopting amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

*D. Small Entities Subject to the Rule and Rule Amendments*

In developing these amendments, we have considered their potential impact on small entities that would be subject to the final amendments. The final amendments will affect many, but not all, investment advisers registered with the Commission, including some small entities.

Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and

(3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[1055] Our final amendments will not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of August 1, 2020, approximately 545 SEC-registered advisers are small entities under the RFA.[1056]

1. Small Entities Subject to Amendments to Marketing Rule

As discussed above in section III. (the Economic Analysis), the Commission estimates that based on IARD data as of August 1, 2020, approximately 13,724 investment advisers would be subject to the final amendments to rule 206(4)–1 under the Advisers Act and the related final amendments to rule 204–2 under the Advisers Act.[1057]

All of the approximately 545 SEC-registered advisers that are small entities under the RFA will be subject to the amended rule 206(4)–1 and corresponding amendments to rule 204–2. This is because, as discussed above in the PRA, we estimate that all investment advisers will disseminate at least one communication meeting the final rule's definition of ''advertisement'' and therefore be subject to the requirements of the final rule.[1058] Furthermore, the rule's additional conditions and restrictions on testimonials, endorsements, and third-party ratings, as well as certain presentations of performance, will apply to many advertisements under the rule.[1059]

2. Small Entities Subject to Amendments to the Books and Records Rule 204–2

As discussed above, there are approximately 545 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us will be subject to amendments to the books and records rule.

3. Small Entities Subject to Amendments to Form ADV

As discussed above, there are approximately 545 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us will be subject to amendments to Form ADV.

*E. Projected Reporting, Recordkeeping and Other Compliance Requirements*

1. Final Rule 206(4)–1

Final rule 206(4)–1 will impose certain reporting and compliance requirements on certain investment advisers, including those that are small entities. All registered investment advisers that distribute advertisements under the rule, which we estimate to be all advisers, will be required to comply with the final rule's general prohibition of fraudulent or misleading advertisements. In addition, all advisers that use testimonials, endorsements, and third-party ratings will be required to include disclosures and comply with other conditions. Small entity advisers will be required to comply with restrictions and other conditions related to the presentation of certain performance results in advertisements. The final amendments, including compliance and recordkeeping requirements, are summarized in this FRFA (section V.A., above). All of these final requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

As discussed above, there are approximately 545 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us will be subject to amendments to the marketing rule. As discussed above in our Paperwork Reduction Act Analysis in section III above, we estimate that the final amendments to rule 206(4)–1 under the Advisers Act, which will require advisers to prepare disclosures for testimonials and endorsements, third-party ratings, and performance results, will create a new annual burden of approximately 98 hours per adviser, or 56,135 hours in aggregate for small advisers.[1060] We therefore expect the annual monetized aggregate cost to small advisers associated with our final amendments to be $18,596,390.[1061]

2. Final Amendments to Rule 204–2

The final amendments to rule 204–2 will require investment advisers to retain records of all advertisements they disseminate. [1062] We are also requiring investment advisers that use a third-party rating in an advertisement to retain a copy of any questionnaire or survey used in preparation of the third-party rating, as well as documentation of communications relating to predecessor performance and supporting performance calculations.[1063] To correspond to the provisions with respect to testimonials, endorsements, and third-party ratings, we are amending the books and records rule to require investment advisers to make and keep records of: (i) If not included in the advertisement, a record of the disclosures provided to clients or investors pursuant to the final rule 206(4)–1; (ii) documentation substantiating the adviser's reasonable basis for believing that the testimonial or endorsement complies with the final rule and that the third-party rating complies with rule 206(4)–1(c)(1); and (iii) a record of the names of all persons who are an investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person, pursuant to

[1055] Advisers Act rule 0–7(a).

[1056] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV. Only SEC- registered investment advisers with RAUM of less than $25 million, as indicated in Form ADV Item 5.F.(2)(c) are required to respond to Form ADV Item 12. For purposes of this analysis, a registered investment adviser is classified as a ''small business'' or ''small organization'' if they respond ''No'' to Form ADV Item 12.A., 12.B.(1), 12.B.(2), 12.C.(1), and 12.C.(2). These responses indicate that the registered investment adviser had RAUM of less than $25 million, did not have total assets of $5 million or more on the last day of the most recent fiscal year; and does not control, is not controlled by, and is not under common control with another investment adviser that has RAUM of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year, consistent with the definition of a small entity under the Advisers Act for purposes of the RFA.

[1057] *See supra* footnote 1038 and accompanying text.

[1058] *See* PRA discussion, above, at sections IV.A and B.

[1059] As discussed above, the use of testimonials, endorsements, and third-party ratings in advertisements is voluntary but we estimate that approximately 50% of registered investment advisers would use testimonials or endorsements in advertisements, and approximately 50% of registered investment advisers would use third-party ratings in advertisements. *See* PRA discussion, above, at sections IV.A and B.

[1060] 1,414,291 hours/13,724 advisers = 103 hours per adviser. 103 hours × 545 small advisers = 56,135 hours.

[1061] $468,287,816 total cost × (545 small advisers/13,724 advisers) = $18,596,390.

[1062] *See* final rule 204–2(a)(11)(i)(A).

[1063] *See* final rule 204–2(a)(7)(iv), (11)(ii), and (16).

the final rule 206(4)–1(b)(4)(ii).[1064] Each of these records will be required to be maintained in the same manner, and for the same period of time, as other books and records required to be maintained under rule 204–2(a).

As discussed above, there are approximately 545 small advisers currently registered with us, and we estimate that 100 percent of advisers registered with us will be subject to amendments to the books and records rule. As discussed above in our Paperwork Reduction Act Analysis in section IV.D above, the amendments to rule 204–2 under the Advisers Act will increase the annual burden by approximately 18.44 hours per adviser, or 10,049.8 hours in aggregate for small advisers.[1065] We therefore believe the annual monetized aggregate cost to small advisers associated with our amendments will be $6,960,596.[1066]

3. Final Amendments to Form ADV

Final amendments to Form ADV will impose certain reporting and compliance requirements on certain investment advisers, including those that are small entities, requiring them to provide information about their use in its advertisements of performance results, previous investment advice, testimonials, endorsements, and third-party ratings. The final amendments, including recordkeeping requirements, are summarized above in this FRFA (section V.A). All of these final requirements are also discussed in detail, above, in section II.I, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

Our Economic Analysis, discussed in section III above, discusses these costs and burdens for respondents, which include small advisers. As discussed above in our Paperwork Reduction Act Analysis in section IV.E above, the final amendments to Form ADV will increase the annual burden for advisers (other than exempt reporting advisers, who will not be required to respond to the new Form ADV questions) by approximately 0.5 hours per adviser, or 272.5 hours in aggregate for small advisers (other than exempt reporting advisers).[1067] We therefore expect the annual monetized aggregate cost to small advisers (other than exempt reporting advisers, for whom there will be no additional cost) associated with our final amendments will be $74,392.50.[1068]

*F. Duplicative, Overlapping, or Conflicting Federal Rules*

1. Final Rule 206(4)–1

Other than existing rule 206(4)–1 and the prohibitions contained in section 208(a)–(c) of the Act, investment advisers do not have obligations under the Act specifically for adviser advertisements. As discussed above in section II.A.4., we recognize that advisers to private funds, who would be included in the scope of the final rule 206(4)–1, are prohibited from making misstatements or materially misleading statements to investors under rule 206(4)–8.[1069] Although the final marketing rule may overlap with the prohibitions in rule 206(4)–8 in certain circumstances, just as it overlaps with section 206 with respect to an adviser's clients and prospective clients, we believe it is important from an investor protection standpoint to delineate these obligations to all investors in the advertising context and provide a framework for an adviser's advertisements to comply with these obligations. We also understand that many private fund advisers already consider the current staff positions related to the current advertising rule when preparing their marketing communications. As a result, we believe that our application of the final rule to advertisements to private fund investors would result in limited additional regulatory or compliance costs for many of these advisers.

We also recognize that advisers have other compliance oversight obligations under the Federal securities laws, including the Act. For example, advisers are subject to the Act's compliance rule, which we adopted in 2003.[1070] Therefore, when an adviser utilizes a promoter as part of its business, the adviser must have in place under the Act's compliance rule policies and procedures that address this relationship and are reasonably designed to ensure that the adviser is in compliance with the final rule. We believe the final rule's adviser oversight and compliance provision applicable to testimonials and endorsements will work well with the Act's compliance rule, as both are principles-based and will allow advisers to tailor their compliance with the final rule as appropriate for each adviser. There are no duplicative, overlapping, or conflicting Federal rules with respect to the final amendments to rule 204–2.

With respect to testimonials and endorsements, our amendments to rule 206(4)–1 will eliminate some regulatory duplication. For example, rule 206(4)–3 has had a duplicative requirement that a solicitor deliver to clients the adviser's Form ADV brochure, even though advisers are already required to deliver their ADV brochures to their clients under rule 204–3. To the extent that both advisers and solicitors currently deliver the adviser's Form ADV brochure, the final rule will reduce the redundancy of disclosures. In addition, as discussed above, the final rule's disqualification provisions will apply to situations in which an adviser compensates a person, directly or indirectly, for a testimonial or endorsement. This includes persons who provide testimonials or endorsements to private fund investors such as broker-dealers. Such broker-dealers may also be subject to the statutory disqualification provisions under the Exchange Act. To the extent that a person is subject to both disqualification provisions, there would be some overlapping categories of disqualifying events (*i.e.,* certain bad acts would disqualify a person under both provisions). For instance, certain types of final orders of certain Federal and foreign regulators would be disqualifying events under both provisions. Accordingly, as discussed above, we are providing an exemption from the disqualification provisions for registered broker-dealers that are subject to and complying with the statutory disqualification provisions under the Exchange Act.

We understand that some promoters will also be subject to the ''bad actor'' disqualification requirements, which disqualify securities offerings from reliance on exemptions if the issuer or other relevant persons (such as underwriters, placement agents and the directors, officers and significant shareholders of the issuer) have been convicted of, or are subject to court or administrative sanctions for, securities

[1064] *See* final rule 204–2(a)(15)(i) through (ii).

[1065] 18.44 hour × 545 small advisers = 10,049.8 hours.

[1066] 545 registered investment advisers × 201.44 hours = 109,784.8 hours. (17% × 109,784.8 hours × $70) + (83% × 109,784.8 hours × $62) = $6,960,596.

[1067] 38.97 hour × 545 small advisers = 21,238.6 hours.

[1068] 272.5 hours × $273 = $74,392.50. *See supra* footnote 1053 for a discussion of who we believe would perform this function, and the applicable blended rate.

[1069] There may be other legal protections of investors from fraud. *See, e.g.,* section 17(a) of the Securities Act, as well as section 10(b) of the Exchange Act and rule 10b–5 thereunder.

[1070] *See supra* footnote 371 and accompanying text. The compliance rule contains principles based requirements for advisers to adopt compliance policies and procedures that are tailored to their businesses. *Id.*

fraud or other violations of specified laws.[1071] Some types of bad acts could disqualify a person from engaging in certain capacities in a securities offering under Rule 506 of Regulation D under the Securities Act, as well as from engaging as a promoter under the final rule. Accordingly, as discussed above, we are providing an exemption from the disqualification provisions for covered persons that are subject to and not disqualified under Rule 506 of Regulation D under the Securities Act.

As discussed above, the final rule's required disclosures provisions will apply to all testimonials and endorsements, including those that are provided by registered broker-dealers in certain circumstances. Such broker-dealers may also be subject to other regulatory disclosure provisions such as under Regulation Best Interest. To the extent that a broker-dealer's testimonial or endorsement is a recommendation subject to Regulation BI, then there would be some overlapping requirements with our final rule (*i.e.,* disclosing compensation arrangements and material conflicts of interest under both provisions). For instance, under the Regulation BI disclosure obligations, when making a recommendation to a retail customer, a broker-dealer must disclose all material facts about the scope and terms of its relationship with a retail customer, such as the material fees and costs the customer will incur as well as all material facts relating to its conflicts of interest associated with the recommendation, including third-party payments and compensation arrangements.[1072] Similarly, under the final rule, when soliciting for an adviser, the broker-dealer would have to disclose any material conflicts of interest on his or her part resulting from their relationship and/or any compensation arrangement with the adviser.[1073] Accordingly, as discussed above, we are providing an exemption from the final rule's required disclosures provisions for testimonials and endorsements that are disseminated by registered broker-dealers to the extent that such testimonials or endorsements are recommendations subject to Regulation BI in order to help eliminate regulatory duplication.

In addition to testimonials and endorsements that are recommendations subject to Regulation BI, we are providing a partial exemption from certain disclosure requirements where a broker-dealer provides a testimonial or endorsement to an investor that is not a retail customer as defined in Regulation BI. As discussed above in section II.C.5.c., we believe that the clear and prominent disclosures such a broker-dealer will be required to provide under our final rule are sufficient to alert an investor that is not a retail customer that a testimonial or endorsement is a paid solicitation. In addition, we believe that these investors will be able to request from the broker-dealer other information about the solicitation.

2. Final Amendments to Form ADV

Our new subsection L (''Marketing Activities'') to Item 5 of Part 1A of Form ADV will require information about an adviser's use in its advertisements of performance results, testimonials, endorsements, third-party ratings and its previous investment advice. These final requirements will not be duplicative of, or overlap with, other information advisers are required to provide on Form ADV.

*G. Significant Alternatives*

1. Final Rule 206(4)–1

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. We considered the following alternatives for small entities in relation to the final rule and the corresponding amendments to rule 204–2 under the Advisers Act and to Form ADV: (i) Differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the final rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the final rule, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the final rule, or any part thereof, would be inappropriate under these circumstances.[1074] Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the final rule and corresponding changes to rule 204–2 and Form ADV. However, we are adopting an exemption for *de minimis* compensation with respect to the use of testimonials and endorsements, which we expect will apply to some small entities that offer *de minimis* compensation to promoters.[1075] Although, as discussed above, we believe heightened safeguards would generally be appropriate for an adviser's use of testimonials or endorsements, a promoter's incentives are significantly reduced when receiving *de minimis* compensation. We believe the need for heightened safeguards for *de minimis* compensation is likewise reduced.

As discussed above, we believe that the final rule will result in multiple benefits to clients. For example, the final rule's disclosure requirements and other conditions applicable to the use of advertisements will provide investors with information they need to assess the adviser's advertising claims (for performance results) and third-party claims about the adviser (for testimonials, endorsements, and third-party ratings). In particular, the disclosures related to testimonials and endorsements will: (i) Help to ensure that investors are aware that promoters have a conflict of interest in referring them to advisers that compensate them for the referral; (ii) extend the current solicitation rule's investor protection to investors whose advisers compensate their promoters with non-cash compensation; (iii) extend the rule to private fund investors; and (iv) eliminate duplicative disclosures. We believe that these benefits should apply

[1071] *See* Disqualification of Felons and Other ''Bad Actors'' from Rule 506 Offerings, Release No. 33–9414 (July 10, 2013) [78 FR 44729 (July 24, 2013).

[1072] *See* Regulation Best Interest Release, *supra* footnote 146, at 14.

[1073] *See* final rule 206(4)–1(b)(1)(iii).

[1074] For example, one commenter stated that smaller advisers would face challenges under the proposed rule in demonstrating that the performance of a representative account is no higher than if all related portfolios had been included. *See* IAA Comment Letter. *See also* proposed rule 206(4)–1(c)(1)(iii)(A). However, we do not believe that providing smaller advisers with the benefit of presenting a single representative account that is not subject to prescribed conditions would justify the risks of cherry-picking related portfolios with higher-than-usual returns. As a result, we are not adopting different compliance requirements or exemptions for smaller advisers. Instead, we have modified our final rule to allow all advisers to include performance returns of a single portfolio if they can demonstrate that the performance is not *materially* higher than if all related portfolios had been included, and the performance meets the rule's general prohibitions. *See* final rule 206(4)–1(d)(4)(i). *See also* section II.E.4. (discussing related performance).

[1075] Specifically, the disqualification provisions of the rule related to testimonials and endorsements will not apply if the person has provided testimonials or endorsements for the investment adviser during the preceding twelve months and the investment adviser's compensation payable to such person for those testimonials or endorsements is $1,000 or less (or the equivalent value in non-cash compensation).

to clients of smaller firms as well as larger firms.

We also believe that the rule's disqualification provisions with respect to testimonials and endorsements will result in transparency and consistency for advisory clients, promoters, and advisers, as the provisions will generally eliminate the need for advisers to seek separate relief from the rule. In addition, as discussed above, we believe that our final rule's placing guardrails on displays of performance will increase investor protection and the utility of the information provided and decrease the likelihood that it is misleading. Establishing different promoter disqualification provisions or performance provisions for large and small advisers would negate these benefits. Also, as discussed above, our staff will use the corresponding information that advisers report on the amended Form ADV to help prepare for examinations of investment advisers. Establishing different conditions for large and small advisers that advertise their services to investors would negate these benefits.

Regarding the second alternative, we believe the final rule is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the final rule will provide general anti-fraud principles applicable to all advertisements under the rule; will provide further restrictions and conditions on certain specific types of presentations, such as testimonials and endorsements; and will provide additional conditions for advertisements containing certain performance information. These provisions will address a number of common advertising practices that have not been explicitly addressed or broadly restricted (*e.g.,* the current advertising rule prohibits testimonials concerning the investment adviser or its services, and direct or indirect references to specific profitable recommendations that the investment adviser has made in the past). The proposed provisions will clarify and modernize the advertising regime, which has come to depend on a large number of no-action letters over the years to fill the gaps.

Regarding the third alternative, we determined to use a combination of performance and design standards. The general prohibitions will be principles-based and will give advisers a broad framework within which to determine how best to present advertisements so they are not false or misleading. There will also be the principles-based requirement that an adviser must have a reasonable basis for believing that a person providing a testimonial or endorsement has complied with the final rule. We believe that providing advisers with the flexibility to determine how to implement the requirements of the rule allows them the opportunity to tailor these obligations to the facts and circumstances of their particular arrangements. The final rule will also contain design standards, as it contains additional conditions for certain third-party statements, and certain restrictions and conditions on performance claims. These restrictions and conditions are narrowly tailored to prevent certain types of advertisements that are not a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act from misleading investors. The corresponding changes to rule 204–2 and Form ADV are also narrowly tailored to reflect the final rule.

We also considered an alternative that would not have included design standards, and that would have relied entirely on performance standards. In this alternative, as discussed in the Economic Analysis at section III above, we would reduce the limitations on investment adviser advertising, and rely on the general prohibitions to achieve the programmatic costs and benefits of the rule. As discussed in the Economic Analysis, we believe that many of the types of advertisements that would be prohibited by the final rule's limitations have the potential to be fraudulent or misleading. We do not believe that removal of the limitations on advertisements we are adopting would, in comparison with the final rule, permit advertisements that would not be inherently fraudulent or misleading. In addition, we believe that the removal of limitations may create uncertainty about what types of advertisements would fall under the general prohibitions.

## Statutory Authority

The Commission is adopting amendments to rule 206(4)–1 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a), and 211(h) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is rescinding rule 206(4)–3 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a), and 211(h) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(d), 80b–6(4), and 80b–11(a) and (h)]. The Commission is adopting amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is adopting amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

## List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

## Text of Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read in part as follows:

**Authority:** 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C 80b–6.

* * * * *

■ 2. Amend § 275.204–2 by

■ a. Revising paragraphs (a)(7)(iv), (a)(11), (15), and (16); and

■ b. Adding paragraph (a)(19).

The revisions and addition read as follows:

### § 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(7) * * *

(iv) Predecessor performance (as defined in § 275.206(4)–1(e)(12) of this chapter) and the performance or rate of return of any or all managed accounts, portfolios (as defined in § 275.206(4)–1(e)(11) of this chapter), or securities recommendations; Provided, however:

(A) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(B) That if the investment adviser sends any notice, circular, or other advertisement (as defined in § 275.206(4)–1(e)(1) of this chapter)

offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof.

* * * * *

(11) (i) A copy of each

(A) Advertisement (as defined in § 275.206(4)–1(e)(1) of this chapter) that the investment adviser disseminates, directly or indirectly, except:

(*1*) For oral advertisements, the adviser may instead retain a copy of any written or recorded materials used by the adviser in connection with the oral advertisement; and

(*2*) For compensated oral testimonials and endorsements (as defined in § 275.206(4)–1(e)(17) and (5) of this chapter), the adviser may instead make and keep a record of the disclosures provided to clients or investors pursuant to § 275.206(4)–1(b)(1) of this chapter; and

(B) Notice, circular, newspaper article, investment letter, bulletin, or other communication that the investment adviser disseminates, directly or indirectly, to ten or more persons (other than persons associated with such investment adviser); and

(C) If such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor; and

(ii) A copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement in the event the adviser obtains a copy of the questionnaire or survey.

* * * * *

(15) (i) If not included in the advertisement, a record of the disclosures provided to clients or investors pursuant to § 275.206(4)–1(b)(1)(ii) and (iii) of this chapter;

(ii) Documentation substantiating the adviser's reasonable basis for believing that a testimonial or endorsement (as defined in § 275.206(4)–1(e)(17) and (5) of this chapter) complies with § 275.206(4)–1 and that the third-party rating (as defined in § 275.206(4)–1(e)(18) of this chapter) complies with § 275.206(4)–1(c)(1) of this chapter.

(iii) A record of the names of all persons who are an investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person pursuant to § 275.206(4)–1(b)(4)(ii) of this chapter.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of any performance or rate of return of any or all managed accounts, portfolios (as defined in § 275.206(4)–1(e)(11) of this chapter), or securities recommendations presented in any notice, circular, advertisement (as defined in § 275.206(4)–1(e)(1) of this chapter), newspaper article, investment letter, bulletin, or other communication that the investment adviser disseminates, directly or indirectly, to any person (other than persons associated with such investment adviser), including copies of all information provided or offered pursuant to § 275.206(4)–1(d)(6) of this chapter; provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's or investor's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

* * * * *

(19) A record of who the ''intended audience'' is pursuant to § 275.206(4)–1(d)(6) and(e)(10)(ii)(B) of this chapter.

* * * * *

■ 3. Revise § 275.206(4)–1 to read as follows:

**§ 275.206(4)–1 Investment Adviser Marketing.**

As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it is unlawful for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of this section.

(a) *General prohibitions.* An advertisement may not:

(1) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;

(2) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission;

(3) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

(4) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

(5) Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;

(6) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or

(7) Otherwise be materially misleading.

(b) *Testimonials and endorsements.* An advertisement may not include any testimonial or endorsement, and an adviser may not provide compensation, directly or indirectly, for a testimonial or endorsement, unless the investment adviser complies with the conditions in paragraphs (b)(1) through (3) of this section, subject to the exemptions in paragraph (b)(4) of this section.

(1) *Required disclosures.* The investment adviser discloses, or reasonably believes that the person giving the testimonial or endorsement discloses, the following at the time the testimonial or endorsement is disseminated:

(i) Clearly and prominently:

(A) That the testimonial was given by a current client or investor, and the *endorsement* was given by a person other than a current client or investor, as applicable;

(B) That cash or non-cash compensation was provided for the *testimonial* or *endorsement,* if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person;

(ii) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or

indirectly, to the person for the *testimonial* or *endorsement;* and

(iii) A description of any material conflicts of interest on the part of the person giving the *testimonial* or *endorsement* resulting from the investment adviser's relationship with such person and/or any compensation arrangement.

(2) *Adviser oversight and compliance.* The investment adviser must have:

(i) A reasonable basis for believing that the testimonial or endorsement complies with the requirements of this section, and

(ii) A written agreement with any person giving a testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of compensation for those activities.

(3) *Disqualification.* An investment adviser may not compensate a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated. This paragraph shall not disqualify any person for any matter(s) that occurred prior to May 4, 2021, if such matter(s) would not have disqualified such person under § 275.206(4)–3(a)(1)(ii) of this chapter, as in effect prior to May 4, 2021.

(4) *Exemptions.* (i) A testimonial or endorsement disseminated for no compensation or *de minimis compensation* is not required to comply with paragraphs (b)(2)(ii) and (3) of this section;

(ii) A testimonial or endorsement by the investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director or employee of such a person is not required to comply with paragraphs (b)(1) and (2)(ii) of this section, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated;

(iii) A testimonial or endorsement by a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is not required to comply with:

(A) Paragraph (b)(1) of this section if the testimonial or endorsement is a recommendation subject to § 240.15l–1 of this chapter (Regulation Best Interest) under that Act;

(B) Paragraphs (b)(1)(ii) and (iii) of this section if the testimonial or endorsement is provided to a person that is not a retail customer (as that term is defined in § 240.15l–1 of this chapter (Regulation Best Interest) under the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)); and

(C) Paragraph (b)(3) of this section if the broker or dealer is not subject to statutory disqualification, as defined under section 3(a)(39) of that Act; and

(iv) A testimonial or endorsement by a person that is covered by rule 506(d) of Regulation D under the Securities Act of 1933 (§ 230.506(d) of this chapter) with respect to a rule 506 securities offering under the Securities Act of 1933 (§ 230.506 of this chapter) and whose involvement would not disqualify the offering under that rule is not required to comply with paragraph (b)(3) of this section.

(c) *Third-party ratings.* An advertisement may not include any third-party rating, unless the investment adviser:

(1) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and

(2) Clearly and prominently discloses, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses:

(i) The date on which the rating was given and the period of time upon which the rating was based;

(ii) The identity of the third party that created and tabulated the rating; and

(iii) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

(d) *Performance.* An investment adviser may not include in any advertisement:

(1) Any presentation of gross performance, unless the advertisement also presents net performance:

(i) With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and

(ii) Calculated over the same time period, and using the same type of return and methodology, as the gross performance.

(2) Any performance results, of any portfolio or any composite aggregation of related portfolios, in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.

(3) Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the Commission.

(4) Any related performance, unless it includes all related portfolios; provided that related performance may exclude any related portfolios if:

(i) The advertised performance results are not materially higher than if all related portfolios had been included; and

(ii) The exclusion of any related portfolio does not alter the presentation of any applicable time periods prescribed by paragraph (d)(2) of this section.

(5) Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.

(6) Any hypothetical performance unless the investment adviser:

(i) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement;

(ii) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and

(iii) Provides (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions; Provided that the investment adviser need not comply with the other conditions on performance in paragraphs (d)(2), (4), and (5) of this section.

(7) Any predecessor performance unless:

(i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(ii) The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts

managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;

(iii) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in paragraph (d)(2) of this section; and

(iv) The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

(e) *Definitions.* For purposes of this section:

(1) *Advertisement* means:

(i) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a private fund advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a private fund advised by the investment adviser, but does not include:

(A) Extemporaneous, live, oral communications;

(B) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or

(C) A communication that includes hypothetical performance that is provided:

*(1)* In response to an unsolicited request for such information from a prospective or current client or investor in a private fund advised by the investment adviser; or

*(2)* To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and

(ii) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

(2) *De minimis compensation* means compensation paid to a person for providing a *testimonial* or *endorsement* of a total of $1,000 or less (or the equivalent value in non-cash compensation) during the preceding 12 months.

(3) A *disqualifying Commission action* means a Commission opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the Federal securities laws.

(4) A *disqualifying event* is any of the following events that occurred within ten years prior to the person disseminating an endorsement or testimonial:

(i) A conviction by a court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in paragraph (2)(A) through (D) of section 203(e) of the Act;

(ii) A conviction by a court of competent jurisdiction within the United States of engaging in, any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the Act;

(iii) The entry of any final order by any entity described in paragraph (9) of section 203(e) of the Act, or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization (as defined in the Form ADV Glossary of Terms)), of the type described in paragraph (9) of section 203(e) of the Act;

(iv) The entry of an order, judgment or decree described in paragraph (4) of section 203(e) of the Act, and still in effect, by any court of competent jurisdiction within the United States; and

(v) A Commission order that a person cease and desist from committing or causing a violation or future violation of:

(A) Any scienter-based anti-fraud provision of the Federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and § 240.10b–5 of this chapter, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)), and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)), or any other rule or regulation thereunder; or

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(vi) A disqualifying event does not include an event described in paragraphs (e)(4)(i) through (v) of this section with respect to a person that is also subject to:

(A) An order pursuant to section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–9) with respect to such event; or

(B) A Commission opinion or order with respect to such event that is not a disqualifying Commission action; provided that for each applicable type of order or opinion described in paragraphs (e)(4)(vi)(A) and (B) of this section:

(*1*) The person is in compliance with the terms of the order or opinion, including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, and fines; and

(*2*) For a period of ten years following the date of each order or opinion, the advertisement containing the testimonial or endorsement must include a statement that the person providing the testimonial or endorsement is subject to a Commission order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the Commission's website.

(5) *Endorsement* means any statement by a person other than a current client or investor in a private fund advised by the investment adviser that:

(i) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;

(ii) Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or

(iii) Refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

(6) *Extracted performance* means the performance results of a subset of investments extracted from a portfolio.

(7) *Gross performance* means the performance results of a portfolio (or portions of a *portfolio* that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio.

(8) *Hypothetical performance* means performance results that were not actually achieved by any portfolio of the investment adviser.

(i) Hypothetical performance includes, but is not limited to;

(A) Performance derived from model portfolios;

(B) Performance that is backtested by the application of a strategy to data from

prior time periods when the strategy was not actually used during those time periods; and

(C) Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement, however:

(ii) Hypothetical performance does not include:

(A) An interactive analysis tool where a client or investor, or prospective client, or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices; provided that the investment adviser:

*(1)* Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

*(2)* Explains that the results may vary with each use and over time;

*(3)* If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

*(4)* Discloses that the tool generates outcomes that are hypothetical in nature; or

(B) Predecessor performance that is displayed in compliance with paragraph (d)(7) of this section.

(9) *Ineligible person* means a person who is subject to a disqualifying Commission action or is subject to any disqualifying event, and the following persons with respect to the ineligible person:

(i) Any employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person;

(ii) If the ineligible person is a partnership, all general partners; and

(iii) If the ineligible person is a limited liability company managed by elected managers, all elected managers.

(10) *Net performance* means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio, including, if applicable, advisory fees, advisory fees paid to underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. For purposes of this rule, net performance:

(i) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and/or

(ii) If using a model fee, must reflect one of the following:

(A) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or

(B) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated.

(11) *Portfolio* means a group of investments managed by the investment adviser. A portfolio may be an account or a private fund and includes, but is not limited to, a portfolio for the account of the investment adviser or its advisory affiliate (as defined in the Form ADV Glossary of Terms).

(12) *Predecessor performance* means investment performance achieved by a group of investments consisting of an account or a private fund that was not advised at all times during the period shown by the investment adviser advertising the performance.

(13) *Private fund* has the same meaning as in section 202(a)(29) of the Act.

(14) *Related performance* means the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria.

(15) *Related portfolio* means a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement.

(16) *Supervised person* has the same meaning as in section 202(a)(25) of the Act.

(17) *Testimonial* means any statement by a current client or investor in a private fund advised by the investment adviser:

(i) About the client or investor's experience with the investment adviser or its supervised persons;

(ii) That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser; or

(iii) That refers any current or prospective client or investor to be a client of, or an investor in a private fund advised by, the investment adviser.

(18) *Third-party rating* means a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business.

**§ 275.206(4)–3 [Removed and reserved]**

■ 4. Remove and reserve § 275.206(4)–3.

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 5. The authority citation for part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.,* Pub. L.111–203, 124 Stat. 1376.

■ 6. Amend Form ADV (referenced in § 279.1) by:

■ a. Adding Item 5.L to Part 1A;

■ b. Revising the instructions to the form, in the section entitled ''Form ADV: Glossary of Terms;''

■ c. Revising the instructions to the form, in the section entitled ''Part 2A of Form ADV: Firm *Brochure,*'' by removing the phrase ''SEC rule 206(4)–3'' in the Note in Item 14.B. and adding, in its place, ''SEC rule 206(4)–1.''

The addition and revision read as follows:

**Note:** The text of Form ADV does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM ADV (Paper Version)**

**• UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND**

**• REPORT BY EXEMPT REPORTING ADVISERS PART lA**

* * * * *

Item 5: Information About Your Advisory Business

ADVISORY ACTIVITIES

L. Marketing Activities

(1) Do any of your *advertisements* include:

a. Performance results?

Y N

b. A reference to specific investment advice provided by you (as that phrase is used in rule 206(4)–1(a)(5))?

Y N

c. *Testimonials* (other than those that satisfy rule 206(4)–1(b)(4)(ii))?

Y N

d. *Endorsements* (other than those that satisfy rule 206(4)–1(b)(4)(ii))?

Y N

e. *Third-party ratings*?

Y N

(2) If you answer ''yes'' to L(1)(c), (d), or (e) above, do you pay or otherwise provide cash or non-cash compensation, directly or indirectly, in connection with the use of *testimonials, endorsements,* or *third-party ratings*?

Y N

(3) Do any of your *advertisements* include *hypothetical performance*?

Y N

(4) Do any of your *advertisements* include *predecessor performance*?

Y N

* * * * *

**FORM ADV: GLOSSARY OF TERMS**

1. *Advertisement:* (i) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes *hypothetical performance,* that offers the investment adviser's investment advisory services with regard to securities to prospective *clients* or investors in a *private fund* advised by the investment adviser or offers new investment advisory services with regard to securities to current *clients* or investors in a *private fund* advised by the investment adviser, but does not include: (A) Extemporaneous, live, oral communications; (B) information contained in a statutory or regulatory Notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or (C) a communication that includes *hypothetical performance* that is provided: (1) In response to an unsolicited request for such information from a prospective or current *client* or investor in a *private fund* advised by the investment adviser; or (2) to a prospective or current investor in a *private fund* advised by the investment adviser in a one-on-one communication; and (ii) any *endorsement* or *testimonial* for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication. *[Used in: Part 1A, Item 5]*

2. *Advisory Affiliate:* Your advisory affiliates are (1) all of your officers, partners, or directors (or any *person* performing similar functions); (2) all *persons* directly or indirectly *controlling* or *controlled* by you; and (3) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions).

If you are a ''separately identifiable department or division'' (SID) of a bank, your *advisory affiliates* are: (1) All of your bank's *employees* who perform your investment advisory activities (other than clerical or administrative *employees*); (2) all *persons* designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities (including supervising the *employees* who perform investment advisory activities); (3) all *persons* who directly or indirectly *control* your bank, and all *persons* whom you *control* in connection with your investment advisory activities; and (4) all other *persons* who directly manage any of your investment advisory activities (including directing, supervising or performing your advisory activities), all *persons* who directly or indirectly *control* those management functions, and all *persons* whom you *control* in connection with those management functions. *[Used in: Part 1A, Items 7, 11, DRPs; Part 1B, Item 2]*

3. *Annual Updating Amendment:* Within 90 days after your firm's fiscal year end, your firm must file an ''annual updating amendment,'' which is an amendment to your firm's Form ADV that reaffirms the eligibility information contained in Item 2 of Part 1A and updates the responses to any other item for which the information is no longer accurate. *[Used in: General Instructions; Part 1A, Instructions, Introductory Text, Item 2; Part 2A, Instructions, Appendix 1 Instructions; Part 2B, Instructions]*

4. *Borrowings:* Borrowings include secured borrowings and unsecured borrowings, collectively. Secured borrowings are obligations for borrowed money in respect of which the borrower has posted collateral or other credit support and should include any reverse repos (*i.e.,* any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed price). Unsecured borrowings are obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support. *[Used in: Part 1A, Instructions, Item 5, Schedule D]*

5. *Brochure:* A written disclosure statement that you must provide to *clients* and prospective *clients.* See SEC rule 204–3; Form ADV, Part 2A. *[Used in: General Instructions; Used throughout Part 2]*

6. *Brochure Supplement:* A written disclosure statement containing information about certain of your *supervised persons* that your firm is required by Part 2B of Form ADV to provide to *clients* and prospective *clients.* See SEC rule 204–3; Form ADV, Part 2B. *[Used in: General Instructions; Used throughout Part 2]*

7. *Charged:* Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs]*

8. *Client:* Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as family members of your *supervised persons.* If your firm also provides other services (*e.g.,* accounting services), this term does not include clients that are not investment advisory clients. *[Used throughout Form ADV and Form ADV–W]*

9. *Commodity Derivative:* Exposures to commodities that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). *[Used in: Part 1A, Schedule D]*

10. *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 your firm's officers, partners, or directors exercising executive responsibility (or *persons* having similar status or functions) is presumed to control your firm.
- 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.

[Used in: General Instructions; Part 1A, Instructions, Items 2, 7, 10, 11, 12, Schedules A, B, C, D, R; DRPs]

11. *Credit Derivative:* Single name credit default swap, including loan credit default swap, credit default swap referencing a standardized basket of

credit entities, including credit default swap indices and indices referencing leveraged loans, and credit default swap referencing bespoke basket or tranche of collateralized debt obligations and collateralized loan obligations (including cash flow and synthetic) other than mortgage backed securities. *[Used in: Part 1A, Schedule D]*

12. *Custody:* Holding, directly or indirectly, *client* funds or securities, or having any authority to obtain possession of them. You have custody if a *related person* holds, directly or indirectly, *client* funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to *clients.* Custody includes:

- Possession of *client* funds or securities (but not of checks drawn by *clients* and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly, but in any case within three business days of receiving them;
- Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw *client* funds or securities maintained with a custodian upon your instruction to the custodian; and
- Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your *supervised person* legal ownership of or access to *client* funds or securities.

*[Used in: Part 1A, Item 9; Part 1B, Instructions, Item 2; Part 2A, Items 15, 18]*

13. *Discretionary Authority or Discretionary Basis*: Your firm has discretionary authority or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for the *client.* Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the *client. [Used in: Part 1A, Instructions, Item 8; Part 1B, Instructions; Part 2A, Items 4, 16, 18; Part 2B, Instructions]*

14. *Employee:* This term includes an independent contractor who performs advisory functions on your behalf. *[Used in: Part 1A, Instructions, Items 1, 5, 11; Part 2B, Instructions]*

15. *Endorsement:* Any statement by a person other than a current *client* or investor in a *private fund* advised by the investment adviser that: (i) Indicates approval, support, or recommendation of the investment adviser or its *supervised persons* or describes that person's experience with the investment adviser or its *supervised persons;* (ii) directly or indirectly solicits any current or prospective *client* or investor to be a *client* of, or an investor in a *private fund* advised by, the investment adviser; or (iii) refers any current or prospective *client* of, or an investor in a *private fund* advised by, the investment adviser. *[Used in: Part 1A, Item 5]*

16. *Enjoined:* This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining *order. [Used in: Part 1A, Item 11; DRPs]*

17. *Equity Derivative:* Includes both listed equity derivative and derivative exposure to unlisted securities. Listed equity derivative includes all synthetic or derivative exposure to equities, including preferred equities, listed on a regulated exchange. Listed equity derivative also includes a single stock future, equity index future, dividend swap, total return swap (contract for difference), warrant and right. Derivative exposure to unlisted equities includes all synthetic or derivative exposure to equities, including preferred equities, that are not listed on a regulated exchange. Derivative exposure to unlisted securities also includes a single stock future, equity index future, dividend swap, total return swap (contract for difference), warrant and right. *[Used in: Part 1A, Schedule D]*

18. *Exempt Reporting Adviser:* An investment adviser that qualifies for the exemption from registration under section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under rule 203(m)–1 of the Advisers Act because it is an adviser solely to *private funds* and has assets under management in the United States of less than $150 million. *[Used in: Throughout Part 1A; General Instructions; Form ADV–H; Form ADV–NR]*

19. *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. The term also includes a general court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

20. *Filing Adviser:* An investment adviser eligible to register with the SEC that files (and amends) a single *umbrella registration* on behalf of itself and each of its *relying advisers. [Used in: General Instructions; Part 1A, Items 1, 2, 3, 10 and 11; Schedule R]*

21. *FINRA CRD or CRD:* The Web Central Registration Depository (''CRD'') system operated by FINRA for the registration of broker-dealers and broker-dealer representatives. *[Used in: General Instructions; Part 1A, Item 1, Schedules A, B, C, D, R, DRPs; Form ADV–W, Item 1]*

22. *Foreign Exchange Derivative:* Any derivative whose underlying asset is a currency other than U.S. dollars or is an exchange rate. Cross-currency interest rate swaps should be included in foreign exchange derivatives and excluded from *interest rate derivatives. [Used in: Part 1A, Schedule D]*

23. *Foreign Financial Regulatory Authority:* This term includes (1) a foreign securities authority; (2) 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 *investment-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above. *[Used in: Part 1A, Items 1, 11, DRPs; Part 2A, Item 9; Part 2B, Item 3]*

24. *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. *[Used in: Part 1A, Item 11; Part 1B, Item 2; Part 2A, Item 9; Part 2B, Item 3]*

25. *Government Entity:* Any state or political subdivision of a state, including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets *controlled* by the state or political subdivision or any agency, authority, or instrumentality thereof; and (iii) any officer, agent, or employee of the state or political subdivision or any agency, authority, or instrumentality thereof, acting in their official capacity. *[Used in: Part 1A, Item 5]*

26. *Gross Notional Value:* The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the reporting date. For options, use delta adjusted notional value. *[Used in: Part 1A, Schedule D]*

27. *High Net Worth Individual:* An individual who is a *qualified client* or who is a ''qualified purchaser'' as defined in section 2(a)(51)(A) of the

Investment Company Act of 1940. *[Used in: Part 1A, Item 5]*

28. *Home State:* If your firm is registered with a *state securities authority,* your firm's ''home state'' is the state where it maintains its *principal office and place of business. [Used in: Part 1B, Instructions]*

29. *Hypothetical Performance:* Performance results that were not actually achieved by any portfolio of the investment adviser. (i) Hypothetical performance includes, but is not limited to: (A) Performance derived from model portfolios; (B) performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and (C) targeted or projected performance returns with respect to any portfolio or to the investment services offered in the *advertisement;* however: (ii) Hypothetical performance does not include: (A) An interactive analysis tool where a *client* or investor, or prospective *client,* or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices; provided that the investment adviser: (1) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions; (2) explains that the results may vary with each use and over time; (3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and (4) discloses that the tool generates outcomes that are hypothetical in nature; or (B) *predecessor performance* that is displayed in compliance with rule 206(4)–1(d)(7). *[Used in: Part 1A, Item 5]*

30. *Impersonal Investment Advice:* Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts. *[Used in: Part 1A, Instructions; Part 2A, Instructions; Part 2B, Instructions]*

31. *Independent Public Accountant:* A public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)). *[Used in: Part 1A, Item 9; Schedule D]*

32. *Interest Rate Derivative:* Any derivative whose underlying asset is the obligation to pay or the right to receive a given amount of money accruing interest at a given rate. Cross-currency interest rate swaps should be included in *foreign exchange derivatives* and excluded from interest rate derivatives. This information must be presented in terms of 10-year bond equivalents. *[Used in: Part 1A, Schedule D]*

33. *Investment Adviser Representative:* Any of your firm's *supervised persons* (*except* those that provide only *impersonal investment advice*) is an investment adviser representative, if —

- the *supervised person* regularly solicits, meets with, or otherwise communicates with your firm's *clients,*
- the *supervised person* has more than five *clients* who are natural persons and not *high net worth individuals,* and
- more than ten percent of the *supervised person's clients* are natural persons and not *high net worth individuals.*

Note: If your firm is registered with the *state securities authorities* and not the SEC, your firm may be subject to a different state definition of ''investment adviser representative.'' Investment adviser representatives of SEC-registered advisers may be required to register in each state in which they have a place of business.

*[Used in: General Instructions; Part 1A, Item 5; Part 2B, Item 1]*

34. *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).

*[Used in: Part 1A, Items 7, 11, Schedule D, DRPs; Part 1B, Item 2; Part 2A, Items 9 and 19; Part 2B, Items 3, 4 and 7]*

35. *Involved:* Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act. *[Used in: Part 1A, Item 11; Part 2A, Items 9 and 10; Part 2B, Items 3 and 7]*

36. *Legal Entity Identifier:* A ''legal entity identifier'' assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee (ROC) or accredited by the Global LEI Foundation (GLEIF). *[Used in: Part 1A, Item 1, Schedules D and R]*

37. *Management Persons:* Anyone with the power to exercise, directly or indirectly, a *controlling* influence over your firm's management or policies, or to determine the general investment advice given to the *clients* of your firm.

Generally, all of the following are management persons:

- Your firm's principal executive officers, such as your chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; your directors, general partners, or trustees; and other individuals with similar status or performing similar functions;
- The members of your firm's investment committee or group that determines general investment advice to be given to *clients;* and
- If your firm does not have an investment committee or group, the individuals who determine general investment advice provided to *clients* (if there are more than five people, you may limit your firm's response to their supervisors).

*[Used in: Part 1B, Item 2; Part 2A, Items 9, 10 and 19]*

38. *Managing Agent:* A managing agent of an investment adviser is any *person,* including a trustee, who directs or manages (or who participates in directing or managing) the affairs of any unincorporated organization or association that is not a partnership. *[Used in: General Instructions; Form ADV–NR; Form ADV–W, Item 8]*

39. *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.) *[Used in: Part 1A, Item 11]*

40. *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. The term also includes a special court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

41. *Non-Resident:* (a) An individual who resides in any place not subject to the jurisdiction of the United States; (b) a corporation incorporated in or that has its *principal office and place of business* in any place not subject to the jurisdiction of the United States; and (c) a partnership or other unincorporated

organization or association that is formed in or has its *principal office and place of business* in any place not subject to the jurisdiction of the United States. *[Used in: General Instructions; Form ADV–NR]*

42. *Notice Filing:* SEC-registered advisers may have to provide *state securities authorities* with copies of documents that are filed with the SEC. These filings are referred to as ''notice filings.'' *[Used in: General Instructions; Part 1A, Item 2; Execution Page(s); Form ADV–W]*

43. *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. *[Used in: Part 1A, Items 2 and 11, Schedules D and R; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

44. *Other Derivative:* Any derivative that is not a *commodity derivative, credit derivative, equity derivative, foreign exchange derivative* or *interest rate derivative. [Used in: Part 1A, Schedule D]*

45. *Parallel Managed Account:* With respect to any registered investment company or series thereof or business development company, a parallel managed account is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified investment company or series thereof or business development company that you advise. *[Used in: Part 1A, Schedule D]*

46. *Performance-Based Fee:* An investment advisory fee based on a share of capital gains on, or capital appreciation of, *client* assets. A fee that is based upon a percentage of assets that you manage is not a performance-based fee. *[Used in: Part 1A, Item 5; Part 2A, Items 6 and 19]*

47. *Person:* A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company (''LLC''), limited liability partnership (''LLP''), sole proprietorship, or other organization. *[Used throughout Form ADV and Form ADV–W]*

48. *Predecessor Performance:* Investment performance achieved by a group of investments consisting of an account or a *private fund* that was not advised at all times during the period shown by the investment adviser advertising the performance. *[Used in: Part 1A, Item 5]*

49. *Principal Office and Place of Business:* Your firm's executive office from which your firm's officers, partners, or managers direct, *control,* and coordinate the activities of your firm. *[Used in: Part 1A, Instructions, Items 1 and 2; Schedules D and R; Form ADV–W, Item 1]*

50. *Private Fund:* An issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act. *[Used in: General Instructions; Part 1A, Instructions, Items 2, 5, 7, and 9; Part 1A, Schedule D]*

51. *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, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge). *[Used in: Part 1A, Item 11, DRPs; Part 1B, Item 2; Part 2A, Item 9; Part 2B, Item 3]*

52. *Qualified Client:* A *client* that satisfies the definition of qualified client in SEC rule 205–3. *[Used in: General Instructions; Part 1A, Schedule D]*

53. *Related Person:* Any *advisory affiliate* and any *person* that is under common *control* with your firm. *[Used in: Part 1A, Items 7, 8 and 9; Schedule D; Form ADV–W, Item 3; Part 2A, Items 10, 11, 12 and 14; Part 2A, Appendix 1, Item 6]*

54. *Relying Adviser:* An investment adviser eligible to register with the SEC that relies on a *filing adviser* to file (and amend) a single *umbrella registration* on its behalf. *[Used in: General Instructions; Part 1A, Items 1, 7 and 11; Schedules D and R]*

55. *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 and New York Stock Exchange (''NYSE'') are self-regulatory organizations. *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Items 9 and 19; Part 2B, Items 3 and 7]*

56. *Sovereign Bonds:* Any notes, bonds and debentures issued by a national government (including central government, other governments and central banks but excluding U.S. state and local governments), whether denominated in a local or foreign currency. *[Used in: Part 1A, Schedule D]*

57. *Sponsor:* A sponsor of a *wrap fee program* sponsors, organizes, or administers the program or selects, or provides advice to *clients* regarding the selection of, other investment advisers in the program. *[Used in: Part 1A, Item 5, Schedule D; Part 2A, Instructions, Appendix 1 Instructions]*

58. *State Securities Authority:* The securities commissioner or commission (or any agency, office or officer performing like functions) of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. *[Used throughout Form ADV]*

59. *Supervised Person:* Any of your officers, partners, directors (or other *persons* occupying a similar status or performing similar functions), or *employees,* or any other *person* who provides investment advice on your behalf and is subject to your supervision or *control. [Used throughout Part 2]*

60. *Testimonial:* Any statement by a current *client* or investor in a *private fund* advised by the investment adviser: (i) About the *client* or investor's experience with the investment adviser or its *supervised persons* (ii) that directly or indirectly solicits any current or prospective *client* or investor to be a *client* of, or an investor in a *private fund* advised by, the investment adviser; or (iii) that refers any current or prospective *client* or investor to be a *client* of, or an investor in a *private fund* advised by, the investment adviser. *[Used in: Part 1A, Item 5]*

61. *Third-party Rating:* A rating or ranking of an investment adviser provided by a *person* who is not a *related person* and such *person* provides such ratings or rankings in the ordinary course of its business. *[Used in: Part 1A, Item 5]*

62. *Umbrella Registration:* A single registration by a *filing adviser* and one or more *relying advisers* who collectively conduct a single advisory business and that meet the conditions set forth in General Instruction 5. *[Used in: General Instructions; Part 1A, Items 1, 2, 3, 7, 10 and 11, Schedules D and R]*

63. *United States Person:* This term has the same meaning as in rule 203(m)–1 under the Advisers Act, which includes any natural person that is resident in the United States. *[Used in: Part 1A, Instructions, Item 5; Schedule D]*

64. *Wrap Brochure or Wrap Fee Program Brochure:* The written disclosure statement that *sponsors* of

*wrap fee programs* must provide to each of their *wrap fee program clients. [Used in: Part 2, General Instructions; Used throughout Part 2A, Appendix 1]*

65. *Wrap Fee Program:* Any advisory program under which a specified fee or fees not based directly upon transactions in a *client's* account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of *client* transactions. [*Used in: Part 1, Item 5; Schedule D; Part 2A, Instructions, Item 4, used throughout Appendix 1; Part 2B, Instructions]*

By the Commission.

Dated: December 22, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–28868 Filed 3–4–21; 8:45 am]

BILLING CODE 8011–01–P

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**Federal Register**

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Friday, March 5, 2021

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