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:

2020–26–20 Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21375; Docket No. FAA–2020–0683; Project Identifier MCAI–2020–01134–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 3, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model BD–500–1A10 airplanes, serial numbers 50010 through 50018 inclusive, and 50020 through 50039 inclusive.

(2) Model BD–500–1A11 airplanes, serial numbers 55003 through 55016 inclusive, and 55018 through 55054 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that during installation on the final assembly line, a foreign object damage (FOD) protective end cap was not removed from an extraction duct of the crew oxygen system. The protective end cap must be removed to prevent a build-up of oxygen under the flight deck floor, which is a fire risk. The FAA is issuing this AD to address this possible ignition source, which could result in an oxygen-fed fire.

(f) Compliance

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

(g) Inspection

Within 1,650 flight hours or 8 months after the effective date of this AD, whichever occurs first: Do a general visual inspection of the air extraction duct installation to determine if a protective end cap is installed, and if installed, remove the protective end cap before further flight, in accordance with Step 2.2 of the Accomplishment Instructions of Airbus Canada Limited Partnership A220 Service Bulletin BD500–351004, Issue 001, dated April 8, 2020.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 local Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2020–19, dated May 26, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0683.

(2) For more information about this AD, contact Siddeeq Bacchus, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7362; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

(j) 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) Airbus Canada Limited Partnership A220 Service Bulletin BD500–351004, Issue 001, dated April 8, 2020.

(ii) [Reserved].

(3) For service information identified in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450–476–7676; email *a220_crc@abc.airbus*; internet *https://a220world.airbus.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 December 16, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–28860 Filed 12–29–20; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–90442; File No. S7–18–15]

RIN 3235–AL87

Amendments to the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its Rules of Practice to require persons involved in Commission administrative proceedings to file and serve documents electronically.

DATES: *Effective Date:* The final rules are effective January 29, 2021, except for Instruction 8 which is effective July 12, 2021.

Compliance Date: Compliance with the amended rules is required on April 12, 2021 (''Compliance Date''). The Compliance Date is discussed further at Section III below.

FOR FURTHER INFORMATION CONTACT: J. Matthew DeLesDernier, Office of the Secretary (202) 551–5400, and Benjamin Schiffrin, Office of the General Counsel, (202) 551–5150, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to 17 CFR 201.102, 201.140, 201.141, 201.150, 201.151, 201.152, 201.193, 201.322, 201.351, 201.420 and 201.440 (''Commission Rules of Practice 102, 140, 141, 150, 151, 152, 193, 322, 351, 420 and 440'').

I. Introduction

On September 24, 2015, the Commission proposed amendments to its Rules of Practice to automate and modernize aspects of the filing process in administrative proceedings through electronic filing and service in such proceedings.[1] The proposed amendments sought to enhance the accessibility and transparency of administrative proceedings and to facilitate the prompt distribution of public information regarding these proceedings by enabling the Commission to more efficiently process filings and make them more readily available to the public. As discussed in the proposing release, the proposed amendments coincided with the Commission's development of an internet-based electronic filing system for its administrative proceedings.

The Electronic Filings in Administrative Proceedings (''eFAP'') system will be accessible via the Commission's website beginning on the Compliance Date of these rules. A link on the website at *www.sec.gov* will route the user to *login.gov* (a General Services Administration service) for multifactor authentication; *login.gov* will then route the user back to the eFAP system. In addition, contemporaneously with the issuance of this release, the Commission's Office of the Secretary has posted on the Commission's website Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications (''Instructions''),[2] as well as an eFAP User Manual (''User Manual'') for participants using the eFAP system.[3] The Instructions describe in ''question and answer'' format the technical requirements for electronic filing, including the mechanics of uploading documents, acceptable file formats, file size limitations, and naming conventions, among other things. They also address electronic service of documents by the Office of the Secretary of the Commission upon the parties to the proceeding, which will occur through the eFAP system, and electronic service by the parties upon other participants in the proceeding, which will be effectuated by email outside of the eFAP system. The User Manual addresses the technical requirements of registration and login and includes various screenshots that users will encounter in navigating the eFAP system.

The proposal involved three primary components. First, persons involved in administrative proceedings who currently are required to file documents under Rules 151 and 152 of the Commission's Rules of Practice would be required to file such documents electronically. Second, persons filing documents in the new eFAP system would be required to redact or omit sensitive personal information and could seek a protective order for any unredacted sensitive personal information that the person believes is necessary to the proceeding. As a corollary to these electronic filing requirements, the proposal also would require electronic filing and redaction of records under Rule 420 and Rule 440 in administrative proceedings involving determinations by self-regulatory organizations (''SROs'') and the Public Company Accounting Oversight Board (''PCAOB''), respectively, and electronic submission and redaction of records under Rule 351 in proceedings before hearing officers. Third, parties would be required to serve each other electronically in the form and manner that is prescribed in the materials posted on the Commission's website.

After carefully considering the comments we received on the proposal, we are adopting the proposal with certain modifications. Under the final rules, pleadings and pleading attachments filed with the Commission under Final Rules 151 and 152 must redact sensitive personal information, but, as discussed below, the redaction requirements are modified from the proposal to eliminate the redaction of records submitted after a hearing before a hearing officer under Final Rule 351(c), records certified and filed by an SRO under Final Rule 420(e), and records certified and filed by the PCAOB under Final Rule 440(d). We have decided to modify the redaction requirements for records submitted or filed under Rules 351, 420 and 440 because, as discussed below, the records received by the Commission under these rules are not posted to the Commission's website. Persons seeking access to such records in administrative proceedings may, consistent with current practice, submit a request to the Commission under the Freedom of Information Act (''FOIA'') or under any other applicable law and, if disclosure is required, then any documents would be redacted by Commission staff as appropriate.

II. Description of the Final Rules

A. Rule 151 (Procedure for Filing Papers With the Commission)

1. Proposed Rules

Rule 151(a) currently sets forth the procedural requirements for filing papers with the Commission. The rule amendments, as proposed, would require all filings and documents that are attached to filings to be submitted electronically in accordance with the requirements of Proposed Rule 152(a). Documents or items not attached to filings, such as hearing exhibits, generally would be submitted in accordance with Proposed Rule 351.[4]

Proposed Rule 151(d) would make amendments to the procedure for filing papers with the Commission that are consistent with the transition to electronic filing, and would require that parties include in the certificate of service the email address to which service was made, if personal service was not effectuated. The proposed rule also would eliminate the requirement in current Rule 151(d) to state in the certificate of service why a different method of service or filing was used, when applicable.

Proposed Rule 151(e) would require persons to omit or redact sensitive personal information from filings. Sensitive personal information would include a Social Security number,

[1] *Amendments to the Commission's Rules of Practice,* Exchange Act Release No. 75977 (Sept. 24, 2015), 80 FR 60082 (Oct. 5, 2015), available at *http://www.govinfo.gov/content/pkg/FR-2015-10-05/pdf/2015-24705.pdf* (last visited Nov. 17, 2020).

[2] *See Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications,* available at *https://www.sec.gov/efapdocs/instructions.pdf.*

[3] *See eFAP User Manual—Registered User and eFAP User Manual—SEC Filer,* available at *https://www.sec.gov/efapdocs/registered-user-manual.pdf* and *https://www.sec.gov/efapdocs/sec-filer-manual.pdf.*

[4] Rule 351 governs, among other things, the submission of exhibits to the Office of the Secretary.

taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any sensitive health information identifiable by individual, such as an individual's medical records. We proposed four exceptions to the redaction requirement. Under the proposal, persons would not be required to redact: (1) The last four digits of a taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number; (2) home addresses and telephone numbers of parties and persons filing documents with the Commission; (3) business telephone numbers; and (4) any information that is available on the Commission's public website from copies of filings by regulated entities or registrants. Under the proposal, if the person making a filing believes that sensitive personal information contained in the filing is necessary to the proceeding, the person would need to file a motion for a protective order in accordance with Rule 322 [5] to limit disclosure of unredacted sensitive personal information.

Under Proposed Rule 151(e), all filings would need to include a certification that any sensitive personal information has been excluded or redacted from the filing or, if necessary to the filing, has been filed under seal pursuant to Rule 322.

2. Comments Received

Two commenters asserted that in requiring parties to undertake the redaction of sensitive personal information, the Commission was ''attempting to devolve its Privacy Act [of 1974] responsibilities on private parties'' and shift the costs of compliance to parties in administrative proceedings.[6] These commenters also asserted that the Commission is barred by the Privacy Act from disclosing home addresses of parties to administrative proceedings.[7] One of these commenters objected to the term ''sensitive health information'' to describe a category of information subject to the redaction requirement, arguing, among other things, that the proposal fails to define this term or provide standards for what would constitute ''sensitive'' health information. The commenter also asserted that the Privacy Act bars ''disclosure of all medical information'' and that such information must not be disclosed by the Commission because ''disclosure of medical files (whether sensitive or not) would not advance FOIA's objective of permitting public scrutiny of agency action.'' [8]

3. Final Rules

We are adopting Rule 151(a) substantially as proposed, with one revision. As adopted, Final Rule 151(a) requires parties to proceedings to submit electronically all filings and documents that are attached to filings in accordance with the requirements of Rule 152(a). Final Rule 151(a) does not include the last sentence of Proposed Rule 151(a), which provided that ''[d]ocuments or items that are not attached to filings . . . shall be submitted in accordance with Rule 351.'' We are deleting this sentence of the proposed language from the final rule to avoid suggesting that Rules 151 and 351 are the only rules governing the submission of documents to the Commission. For example, while Rule 351 governs the filing of records from hearings, Rule 420(e) and Rule 440(d), respectively, govern the submission of SRO and PCAOB records to the Commission.

We did not receive any comments on the proposed amendments to Rule 151(d) and are adopting these amendments as proposed. Final Rule 151(d) provides that papers filed with the Commission must include in the certificate of service the email address to which service was made, if not made in person.

In light of the concerns raised by commenters, we are adopting Rule 151(e) with a modification from the proposal to the definition of sensitive personal information. Specifically, we are modifying the proposed phrase ''sensitive health information'' to address the concerns raised by a commenter who argued that FOIA Exemption 6 [9] protects health information that is not ''sensitive'' and that the Commission did not provide a basis for determining what information constitutes ''sensitive health information.'' [10] Although this commenter suggested that any information that would be protected by FOIA Exemption 6 must be omitted or redacted in papers filed with the Commission to satisfy the Privacy Act,[11] that is not the case. An agency may disclose information protected by the Privacy Act in connection with the agency's ''routine uses'' regardless of whether the information is exempt under FOIA.[12] The Commission's System of Records Notice (''SORN'') for administrative proceeding files includes, as one of the routine uses, making records available to the public in matters involving administrative proceedings.[13] Thus, as appropriate, the Commission can release information in administrative proceeding filings that could be protected by FOIA in other contexts without violating the Privacy Act.

Nonetheless, we take seriously the commenter's concerns regarding Exemption 6's protection of health information. Our staff will continue to review filings before posting them. And although the Commission is not required to protect all information that FOIA Exemption 6 protects when releasing filings in administrative proceedings, the policy behind FOIA Exemption 6 is relevant to a determination of what redactions are appropriate. To address these considerations, we are substituting the term ''unnecessary'' for the term ''sensitive,'' so that the standard for redaction or omission under the final rules is ''unnecessary'' health information. Under Final Rule 151(e), a party is required to redact or omit health information that is not necessary to the proceeding. We believe that parties to a proceeding will be in the best position to know what health information is necessary to a proceeding. We believe that health information that is discussed in a brief, motion, or other filing will

[5] 17 CFR 201.322. *See infra* at II.C. for a discussion of amendments to Rule 322.

[6] *See* Keith Paul Bishop letter dated October 6, 2015 (''Bishop letter'') at 2–3; Anonymous letter dated October 18, 2015 (''Anonymous letter'') at 2.

[7] Bishop letter at 2; Anonymous letter at 2.

[8] Bishop letter at 3.

[9] 5 U.S.C. 552(b)(6) (protecting information about individuals when disclosure of the information ''would constitute a clearly unwarranted invasion of personal privacy''); *see also* 5 U.S.C. 552(b)(7)(C) (protecting law enforcement information when its disclosure ''could reasonably be expected to constitute an unwarranted invasion of personal privacy'').

[10] Bishop letter at 3.

[11] Bishop letter at 2 (citing 5 U.S.C. 552a(b)(2) (allowing disclosure of information protected by the Privacy Act when the FOIA requires disclosure)).

[12] 5 U.S.C. 552a(b)(3), (e)(4)(D); *see also, e.g., Dep't of the Air Force, Scott Air Force Base* v. *Fed. Labor Rels. Auth.,* 104 F.3d 1396, 1401–02 (D.C. Cir. 1997) (discussing routine use exception).

[13] *See System of Records Notice SEC–36* (Administrative Proceeding Files) available at *https://www.sec.gov/about/privacy/sorn/secsorn36.pdf; see also Privacy Act of 1974: Systems of Records,* Release No. PA–52, 79 FR 69894, 69896 (2014) (Routine Use No. 18 authorizing disclosure ''[t]o members of Congress, the press and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction. In matters involving public proceedings, most of the records are available to the public.'').

likely be necessary to an issue in the proceeding—for example, if a respondent's health condition served as a basis for a defense against liability in the proceeding, or if the health of counsel is proffered as a basis for an extension of a filing deadline—while health matters that may be referenced only in transcripts or other documents attached to filings generally are not likely to be necessary.

We recognize that by requiring the omission or redaction only of unnecessary health information, we are allowing parties to file, without redaction, sensitive health information that is necessary to a proceeding. Such an approach is similar to the balancing that courts have applied in the FOIA context. Under FOIA, to determine whether an invasion of privacy is unwarranted, agencies balance privacy interests and the public interest in understanding the activities of the agency. Disclosure of information in which an individual has a privacy interest is warranted when that public interest outweighs any privacy interests.[14] When health information is necessary to a proceeding, it may shed light on the basis for decisions in administrative proceedings, and provide valuable information to the public.

However, we recognize that there may be situations in which a person has a privacy interest in necessary information that outweighs the value in providing that information to the public. We believe that those situations can be better handled through a motion for a protective order under Rule 322 to limit disclosure of the unredacted health information because it requires a facts and circumstances determination on a case-by-case basis.

Under Final Rule 322(b), filing a motion for a protective order allows for a case-by-case determination as to whether ''the harm resulting from disclosure would outweigh the benefits of disclosure.'' Any party may file a motion for a protective order regarding health information either to protect information it anticipates including in filings or to protect information it anticipates another party may include in filings. We recognize that this approach may leave open the possibility that health information about a victim or other third party may not be protected from disclosure where such protection may be warranted, but we think the possibility of any clearly unwarranted disclosure is unlikely because filers have an obligation to redact unnecessary information, and health information in which victims or other similarly situated persons have a strong privacy interest is rarely necessary in administrative proceedings. In addition, where health information about victims is necessary, the Division of Enforcement will have an interest in protecting victims from unwarranted disclosures of sensitive health information both because it will be seeking to protect victims generally and because taking steps to protect and help victims would, in most instances, make the victims more likely to cooperate in an investigation. We encourage all parties to exercise caution when including health information in their filings. Of course, as noted above, our staff will also continue to review filings before posting them.[15]

In addition to the comment on the disclosure of health information, two commenters argued that the Commission is barred by the Privacy Act from disclosing home addresses of parties and persons filing documents with the Commission and therefore the Commission should modify the rule to require redaction of this information. We are adopting Rule 151(e) as proposed to not require redaction of home addresses of parties to administrative proceedings and of persons filing documents with the Commission in administrative proceedings. As noted above, one of the Commission's routine uses for records in administrative proceedings is making them available to the public, so disclosure of home addresses does not violate the Privacy Act. We also believe that individuals often have only a minimal privacy interest in home addresses because home addresses are often readily available to the public. In contrast, requiring redaction of home addresses could place a burden on the Commission and on filers. Because certificates of service and filings in cases with *pro se* respondents regularly contain the respondents' home addresses, it would be necessary to redact the addresses and then file unredacted certificates of service under seal. We also note that redacting home addresses is not required in civil proceedings in federal court.[16] Based on this, the Commission believes that keeping the exception as proposed is appropriate and consistent with the goal of promoting transparency. As discussed above, a motion for a protective order to limit the disclosure of the information may be filed under Rule 322.

Although we are not requiring redaction of home addresses of parties to administrative proceedings and of persons filing documents in those proceedings, upon further consideration we are adopting Rule 151(e) to require the full redaction of taxpayer identification numbers, including social security numbers, given the sensitive nature of that information. If a person making a filing believes that sensitive personal information is necessary to the proceeding, Rule 151(e)(2) allows for the filing of an unredacted document along with a motion for a protective order to limit the disclosure of the information under Rule 322. We are adopting Rule 151(e)(2) substantially as proposed with a minor modification to make clear that a redacted version of the document should be filed along with the motion for a protective order under Rule 322.

Final Rule 151(e)(3) requires that all filings include a certification that any sensitive personal information has been omitted or redacted from the filing or, if necessary to the filing, has been filed under seal pursuant to Rule 322. Final Rule 151(e)(3) modifies the language of the certification in the proposed rule to substitute the word ''omitted'' for the proposed word ''excluded.'' We are making this technical correction to conform the language of the certification to the prefatory language in paragraph (e), which requires that sensitive personal information be redacted or ''omitted'' from all filings. We are also modifying in the Final Rule the language of the certification from the language used in the proposed rule to replace ''any sensitive personal information'' with ''any information described in paragraph (e) of this rule'' to clarify that the certification does not cover sensitive personal information that is exempted from the redaction requirement.

We do not agree with the commenter who suggested the Commission was ''attempting to devolve'' its Privacy Act responsibilities on private parties by requiring parties to undertake the redactions in administrative proceedings. Requiring private parties to redact certain information that is not necessary to a proceeding is consistent with the Privacy Act requirement that each agency ''maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the

[14] *See Dep't of Justice* v. *Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773–73 (1989).

[15] *See* 5 U.S.C. 552a (setting forth what personal information the federal government collects and how it uses or discloses that information).

[16] *See* Fed. R. Civ. P. 5.2.

President.'' [17] And two commenters supported the idea that the parties filing documents are well positioned to undertake redaction and initially draft documents to avoid the use of sensitive personal information.[18] One of these commenters explained that this was because they ''have the most knowledge, and control over the creation, of the documents.'' [19] We therefore continue to believe that parties filing documents are well positioned to undertake the redaction requirement. In addition, the final rules do not obviate the Commission's obligations under the Privacy Act because, even if the parties redact information, the Commission maintains ultimate responsibility for complying with the Privacy Act. We note that other federal agencies also require parties making filings to redact or exclude certain sensitive personal information.[20]

B. Rule 152 (Filing of Papers: Form)

1. Proposed Rule

Current Rule 152 specifies the requirements for filing papers in administrative proceedings. The proposed amendments to Rule 152(a) would direct persons to submit all filings electronically in the form and manner that is posted in the materials on the Commission's website. Under Proposed Rule 152(a), papers filed electronically would need to be received by the Commission by midnight Eastern Time, as opposed to 5:30 p.m. Eastern Time, the current deadline for filing papers.

Proposed Rule 152(a)(1) would provide further requirements if a person could not reasonably comply with the electronic filing requirements due to lack of access to electronic transmission devices (as a result, for example, of incarceration). The person would file a certification explaining why he or she reasonably cannot comply and indicating the expected duration of the person's reasonable inability to comply. The certification would be immediately effective and, upon filing such certification, the person could file paper documents by any other methods listed in the rule. Under Proposed Rule 152(a)(2), such non-electronic methods would include hand delivery though a commercial courier service or express delivery service, to be received by the Commission by 5:30 p.m. Eastern Time; mailing through the U.S. Postal Service, to be received by the Commission by 5:30 p.m. Eastern Time; or transmittal by facsimile, to be received by the Commission by midnight Eastern Time.

Proposed Rule 152(b) would make amendments to the form of papers required to be filed with the Commission that would be consistent with the transition to electronic filing, such as the deletion of references to typewritten copies and the requirement to staple or otherwise fasten papers. Likewise, the proposal would eliminate the requirement in current Rule 152(d) to file an original and three copies of all papers filed with the Commission, and would delete the reference to microfilming in current Rule 152(c).

Proposed Rule 152(c) would provide that electronic filings that require a signature pursuant to Rule 153 (Filing of Papers: Signature Requirement and Effect) [21] may be signed with an ''/s/'' notation, which would be deemed the signature of the person making the filing for purposes of Rule 153.

The proposing release stated that, for the first 90 days after the proposed amendments become effective, the Commission would administer a phase-in period that would require all filings to be made both electronically and in paper format. Our preliminary view was that a 90-day phase-in period would constitute a reasonable amount of time for persons to become proficient in the electronic filing procedures while ensuring that the Commission receives the filing should there be an electronic transmission failure. The proposal also suggested that a longer phase-in period might be appropriate in case of substantial difficulties with electronic filing.

2. Comments Received

Commenters generally supported electronic filing,[22] but one thought the Commission should further increase transparency in its administrative proceedings by adopting an electronic filing system akin to the PACER system in the federal courts, and make the docket and documents filed in administrative proceedings directly accessible to the public upon filing.[23]

Another commenter asserted that the Commission should describe the form or manner of electronic filing that will be required, such as the acceptable electronic formats, file size requirements, naming conventions, and encryption requirements.[24]

3. Final Rule

We are adopting the amendments to Rule 152 as proposed to require electronic filing in Commission administrative proceedings, with certain revisions as described below. Although the eFAP system will not allow for immediate and direct public access to the docket and filings in administrative proceedings as one commenter urged, it will facilitate the public's access to filings in the Commission's administrative proceedings and provide the parties and the Commission with access to the filings more quickly. Electronic filing under the amended rules will enable the Commission to more efficiently process and post filings. Electronic filing will make administrative proceedings more efficient, as it will eliminate delays that result from filing paper documents through the mail and routing paper filings internally throughout the Commission. At this point in time, the eFAP system will not generate an automatic public docket, but we anticipate that electronic filing could facilitate the development of such a public docket in the future and that Commission staff will work toward that objective. While we are allowing, as proposed, an ''/s/'' signature for electronic filings, upon further consideration we are clarifying that, in those situations, the filer's login and password into the eFAP system will be deemed the signature for each filing.

As noted above, one commenter stated that the proposal did not specify the technical requirements for electronic filing; the Office of the Secretary is posting on the Commission's website contemporaneously with the issuance of this release instructions for electronic filing and service. As set forth in the Instructions, parties are advised that documents filed electronically should, where possible, be filed in native portable document format (pdf). The Instructions include additional details, including the mechanics of uploading documents, acceptable file formats, file

[17] 5 U.S.C. 552a(e)(1).

[18] *See* Financial Industry Regulatory Authority letter dated November 24, 2015 (''FINRA letter'') and Public Company Accounting Oversight Board letter dated December 3, 2015 (''PCAOB letter'').

[19] *See* PCAOB letter.

[20] *See, e.g.,* National Labor Relations Board, E-Filing Terms and Conditions, *available at http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1673/electronic_filings.pdf* (last visited Nov. 17, 2020) (directing filers to ''redact (remove) any non-essential personally identifiable information before uploading an E-filing''); Federal Maritime Commission, Rules of Practice and Procedure, 46 CFR 502.13(a) (requiring parties to exclude information such as social security numbers in electronic or paper filings); Department of Labor, Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 CFR 18.31(a) (same).

[21] 17 CFR 201.153.

[22] Financial Services Roundtable letter dated December 4, 2015 (''FSR letter'') at 3,10; New York Stock Exchange letter dated December 3, 2015 (''NYSE letter'') at 1; PCAOB letter at 1; FINRA letter at 1; Better Markets letter dated December 4, 2015 (''Better Markets letter'') at 1.

[23] Better Markets letter at 1, 2–3.

[24] *See, e.g.,* FINRA letter n.3 & 15.

size limitations, and naming conventions, among other things. The User Manual includes various screenshots from the registration and filing process and provides detailed instructions for navigating the system. The Commission believes that providing filers with this information now, coupled with a longer compliance period than was proposed (discussed *infra*),[25] will provide filers with the necessary information and time to prepare for electronic filing under the Final Rules. The Instructions are intended to assist filers in complying with the Final Rules. We expect that the Instructions and User Manual will be updated periodically to reflect changes in technology and the Commission's experience with the new electronic filing system, and we have accordingly revised Rules 152(a) and 152(d) to make clear that proper use of the electronic filings system will be as specified by the Office of the Secretary in materials posted on the Commission's website.

We did not receive comments addressing the requirement for both electronic and paper copies during the proposed 90-day phase-in period. To help facilitate compliance with this provision, we are amending Rule 152 to add a new paragraph (g) entitled ''Interim Procedures for Filing Papers with the Commission in Both Electronic and Paper Format.'' Final Rule 152(g) requires that, for the initial 90-day period beginning on April 12, 2021, papers filed in connection with any proceeding as defined in Rule 101(a) shall be filed both electronically in accordance with section (a) and, in addition, in either paper format or by email.[26] If filed in paper format, an original and three copies of all paper filings must be submitted to the Office of the Secretary in accordance with any of the delivery methods set forth in section (a)(2). Final Rule 152(g) will be removed from the Final Rules on July 12, 2021, when the rule is no longer relevant.

C. Rule 322 (Protective Orders)

1. Proposed Rule

Rule 322 currently provides a process for seeking a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. We proposed to amend the rule to articulate requirements for requesting a protective order when review of the documents that are the subject of the request is necessary to a ruling on the motion. In such instances, proposed Rule 322(b) would require the movant to file an unredacted version of the submission to be used by the hearing officer and the Commission for purposes of the proceeding and a redacted version to be used for distribution to the public. All confidential information in the unredacted version would need to be marked as such and the first page of the document would need to be labeled ''Under Seal.'' The redacted version would be required to be identical in all other respects to the unredacted version. A person would not be required to file a redacted version if the submission would be redacted in its entirety.

2. Comments Received

We received one comment requesting a streamlined protective order process under Rule 322 for records from SRO proceedings.[27] The commenter urged that, in the event that the Commission required SROs to redact exhibits and transcripts from SRO proceedings upon filing with the Commission under proposed Rule 420, the Commission should streamline the protective order process for those exhibits and transcripts. Because, as discussed below, the final rules do not require SROs to redact exhibits and transcripts submitted under Rule 420, the comment is moot.[28]

3. Final Rule

We are adopting Rule 322(b) as proposed. Final Rule 322(b) applies to all motions for protective orders under Rule 322, *i.e.,* not just motions regarding sensitive personal information.

D. Rule 420 (Appeal of Determinations by Self-Regulatory Organizations)

1. Proposed Rule

Current Rule 420 sets forth the requirements regarding appeals of determinations by self-regulatory organizations.[29] Currently, Rule 420(e) requires a self-regulatory organization to certify and file with the Commission one copy of the record upon which the action complained of was taken, to file with the Commission three copies of an index to such record, and to serve upon each party one copy of the index within fourteen days after receiving an application for review or a Commission order for review. The proposed amendments to Rule 420(e) would require an SRO to certify and electronically file with the Commission, in the form and manner that is prescribed in the materials on the Commission's website, one unredacted copy of the record upon which the action complained of was taken. If such record contains any sensitive personal information, the SRO would also need to file electronically with the Commission one redacted copy of such record. The definition of sensitive personal information in proposed amendments to Rule 420(e) would mirror the definition in Proposed Rule 151. The proposed amendments to Rule 420(e)(2) also would require an SRO to file electronically with the Commission one copy of a record index and to serve the index upon each party. The proposed amendments would provide that, if such record index contains any sensitive personal information, the SRO would be required to file electronically a copy of the record and index that omits or redacts the sensitive personal information. The proposed amendments would also require persons making a filing pursuant to Rule 420 to certify that any sensitive personal information has been excluded or redacted from the filing under Proposed Rule 420(e)(3).

2. Comments Received

The two comments we received on this aspect of the proposal generally supported the Commission's efforts to create an electronic filing system and modernize aspects of the filing process in appeals from SRO proceedings.[30] But the commenters expressed concern that the redaction requirement as proposed would impose a ''substantial burden.'' [31] One SRO noted that because it does not currently have rules that mandate exclusion or redaction of sensitive information for parties filing documents in its disciplinary and appealable proceedings, it would potentially be required to spend hundreds of hours a year redacting exhibits and other filings that contain sensitive personal information.[32] This commenter urged

[25] *See infra* discussion at Section III (Compliance Date and Phase-In Period for the Final Rules).

[26] *See Pending Administrative Proceedings,* Exchange Act Release No. 88415, *https://www.sec.gov/litigation/opinions/2020/33-10767.pdf* (providing that pending further order of the Commission parties to the extent possible shall submit all filings electronically at *apfilings@sec.gov*).

[27] *See* FINRA letter at 6.

[28] *See* discussion of amendments to Rule 420, *infra* at Section D.

[29] 17 CFR 201.420.

[30] *See* FINRA letter at 9; NYSE letter at 1.

[31] FINRA letter at 9; *see also* NYSE letter at 1 (describing proposed redaction requirement as ''unduly burdensome'').

[32] FINRA letter at 2; *see also id.* at 4 (''FINRA's experience shows that redaction will be a highly costly endeavor that intensively consumes time and labor. During the first nine months of 2015, FINRA filed approximately 85,622 record pages in 11 appeals to the Commission. The costs involved in redacting a large record are dramatic. When recently redacting a record with 39,266 pages, FINRA expended 201.5 man hours. Based on the first nine months of 2015, FINRA projects that it

Continued

the Commission to exempt from the redaction requirement exhibits and transcripts contained in the record of the SRO.[33] As an alternative, the commenter suggested a streamlined process for an SRO to obtain a protective order for exhibits in the record.[34] Another commenter requested that the Commission clarify the types of documents that it intends to post on its website in connection with appeals of SRO disciplinary proceedings.[35]

Another SRO requested additional time to file the redacted certified record.[36] With respect to the certification requirement in Proposed Rule 420(e), the SRO asserted that such a requirement would be onerous because of the large number of pages contained in the records of its proceedings and the potential for human error in the redaction process. The commenter suggested that an SRO be allowed to certify instead that it has undertaken ''reasonable efforts'' to exclude or redact any sensitive personal information.[37]

3. Final Rule

We are adopting the proposed amendments to Rule 420 with certain modifications in response to the comments. Final Rule 420(e) adopts the proposed requirement for SRO certification and electronic filing of the record fourteen days after receipt of an application for review or a Commission order for review, but the Final Rule limits the proposed redaction requirements to the record index required to be filed pursuant to Rule 420(e). As a result, SROs need not redact the certified record filed pursuant to the Rule. We are adopting this approach because we are persuaded by the commenters who emphasized that such a requirement would be burdensome because of ''the large number of pages contained in the records of its proceedings and the potential for human error in the redaction process.'' [38] We believe that any potential transparency benefits from requiring redaction of such records under this rule do not justify the costs and burdens associated with requiring the redaction of these often-voluminous records, many of which may contain large amounts of sensitive personal information. While we recognize the benefits of transparency in our proceedings and intend to continue to post significant pleadings such as substantive motions and merits briefs on the Commission's website—which will be facilitated by the electronic submission of those documents—the Commission does not post on its website the record underlying an SRO appeal. We thus have decided to modify from the proposal the redaction requirements for those records under Final Rule 420.

By contrast, under the final rule, if any such SRO records (including exhibits or transcripts) are attached to a filing pursuant to Final Rule 151 (Filing of Papers with the Commission; Procedure), the attachment must comply with the Final Rule 151 redaction requirements.[39] This distinction recognizes the difference between the often voluminous records underlying an SRO appeal, which the Commission currently does not—and under the final rule will not—post to its website, and exhibits filed as attachments to significant filings, which typically are less voluminous and which are posted—and will continue to be posted—together with the filing.

Persons who wish to obtain records certified and filed by an SRO pursuant to Rule 420(e) may, consistent with current practice, submit a request to the Commission under FOIA and, if disclosure is required under FOIA, then any documents produced would be redacted by Commission staff as appropriate under FOIA.

Final Rule 420(e) retains the requirement from the proposal that the SRO electronically file an index to the record, and retains, from the proposal, the redaction requirement for the record index. The Final Rule requires redaction of sensitive personal information from the record index because the record index will be made available on the Commission's website, and we expect the burden to SROs of redacting the record index will be minimal. Accordingly, as was proposed, Final Rule 420(e) provides that if the index contains any sensitive personal information, the SRO must file electronically an unredacted copy of the record index and a redacted copy of the index. The record index should assist the public in identifying what documents are not publicly available and thereby inform any requests that the public may wish to make pursuant to FOIA, because it will list each of the documents filed in the underlying SRO proceeding.[40]

The final rule renumbers proposed paragraph (e)(2) as paragraph (e)(1), and proposed paragraph (e)(1) as paragraph (e)(2). This conforming change aligns with the final amendments to this rule because it first sets forth the document that must be redacted in paragraph (e)(1) (*i.e.,* the record index) and then follows with the specific redaction requirements in paragraph (e)(2).

Final Rule 420(e)(2) articulates the definition of sensitive personal information that must be redacted from the record index. As with the amendments to Rule 151(e), Final Rule 420(e)(2) modifies the proposed definition of ''sensitive health information'' to substitute the term ''unnecessary'' for the term ''sensitive,'' so that the standard for health information required to be redacted or omitted is ''unnecessary'' health information.[41] Also like Rule 151(e), Final Rule 420(e)(2) requires the full redaction of taxpayer identification numbers.

We are adopting the certification requirement substantially as proposed, but in response to a comment we are revising the language to clarify that the certification requirement does not apply to the record.[42] The final rule also renumbers the certification in proposed paragraph (e)(3) as paragraph (f) in Final Rule 420 to clarify that the certification requirement applies to an application for review filed under Rule 420(a). As we did in Final Rule 151, we are modifying the certification in the proposed rule to substitute the word ''omitted'' for the proposed word ''excluded'' to conform the language of the certification to the prefatory language in paragraph (c). We are also modifying the language of the certification in the proposed rule to replace ''any sensitive personal information'' with ''any information described in paragraph (e)(2) of this rule'' to clarify that the certification does not cover sensitive personal information that is exempted from the redaction requirement. As adopted, Final Rule 420(f) states that ''[a]ny filing made pursuant to this rule, other than the record upon which the action

will file 114,160 pages of certified records this year.'').

[33] *Id.* at 3 (''FINRA urges the Commission to exclude SROs from the requirements to redact and certify that the exhibits and Trial-Level Transcripts contained in records submitted pursuant to SEC Rule of Practice 420(e) do not contain sensitive personal information.'').

[34] *Id.* at 6–7.

[35] NYSE letter at 2.

[36] FINRA letter at 7.

[37] *Id.* at 9.

[38] FINRA letter at 9.

[39] *See* 17 CFR 201.322(c) (''Documents and testimony introduced in a public hearing are presumed to be public'').

[40] Since Final Rule 420 will not require redaction of exhibits and transcripts, the comment seeking a streamlined process for an SRO to obtain a protective order for such portions of the record on appeal is moot. For the same reasons, the final amendments obviate the need for additional time to file redacted copies of the certified record.

[41] *See* discussion *supra* at Section II.A.3.

[42] *See* PCAOB Letter at 3 n.3.

complained of was taken, must include a certification that any information described in paragraph (e)(2) of this rule has been omitted or redacted from the filing.'' This certification mirrors the filer's obligation to either not include sensitive personal information in filings or redact any sensitive personal information included in the filings.

In response to the comment urging the Commission to revise the certification requirement to substitute a ''reasonable efforts'' standard, we believe that the language of the certification in the final rule is appropriate because it creates a clear standard that is easily applied. We also note that the ''reasonable efforts'' standard was suggested by the commenter in response to the proposed rule that would have required the entire SRO record to be redacted, rather than only the record index. Because the final rule limits the redaction requirement to the record index, the potential for human error in the redaction process should be significantly reduced. Finally, the language of the certification in the Final Rule is generally consistent with the certification requirements of many federal courts.[43] As with Rule 152(a), we have also modified Rule 420(e) to clarify that electronic filing of the record will be done in the form and manner as specified by the Office of the Secretary in materials posted on the Commission's website.

E. Rule 440 (Appeal of Determinations by the Public Company Accounting Oversight Board)

1. Proposed Rule

Current Rule 440[44] largely tracks Current Rule 420 and sets forth similar requirements regarding appeals of determinations by the PCAOB. Like Proposed Rule 420, the proposed amendments to Rule 440(d) would require the PCAOB to electronically file with the Commission in the form and manner that is prescribed in the materials on the Commission's website one unredacted copy of the record upon which the action complained of was taken. If such record contains any sensitive personal information, the PCAOB would also need to file electronically with the Commission one redacted copy of such record. The definition of sensitive personal information under the proposed amendments also would mirror the definition in Proposed Rules 151 and 420. Proposed Rule 440(d)(2) would require the PCAOB to file electronically with the Commission one copy of a record index and to serve the index upon each party. The proposed amendments would also provide that, if such index contains sensitive personal information, the PCAOB would be required to file electronically a copy of the record and index that omits or redacts the sensitive personal information and to certify that any sensitive personal information has been excluded or redacted from the filing.

2. Comments Received

We received one comment on the proposed amendments to Rule 440.[45] The commenter noted that PCAOB disciplinary proceedings can generate voluminous records, and asserted that it could better achieve the objectives sought in the proposed rules by implementing processes designed to prevent the parties' introduction of sensitive personal information from the initiation of the disciplinary proceeding and to require the parties to redact sensitive personal information as necessary, and by certifying that the PCAOB has processes in place that are ''reasonably designed to ensure compliance with requirements for protecting sensitive personal information.'' [46]

3. Final Rule

We are adopting amendments to Rule 440 that are consistent with the modifications to Final Rule 420. Like Final Rule 420, Final Rule 440(d) adopts the proposed requirement for PCAOB certification and electronic filing of the record fourteen days after receipt of an application for review or a Commission order for review, but clarifies that such filing will be done in form and manner as specified by the Office of the Secretary in materials posted on the Commission's website. The redaction requirements in Final Rule 440(d), consistent with Final Rule 420, do not include the underlying records. The Commission recognizes that, like SRO proceedings, PCAOB disciplinary proceedings can generate voluminous records, many of which may contain sensitive personal information. In response to the comment received on this aspect of the proposal, and for the reasons discussed above with respect to Rule 420, we believe that any potential benefits from requiring redaction of PCAOB disciplinary proceeding records under Rule 440 do not justify the potential costs and burdens associated with such redaction requirements.[47] However, for the same reasons discussed above with respect to Rule 420, any filing and any record attached to a filing pursuant to Final Rule 151 must comply with the redaction requirements of that rule. This distinction recognizes the difference between the often voluminous records underlying a PCAOB appeal, which the Commission does not—and under the final rule will not—post to its website, and exhibits filed as attachments to filings, which typically are less voluminous and will continue to be posted with the filing.

Final Rule 440(d) retains the requirement that the PCAOB electronically file an index to the record, and retains, from the proposal, the redaction requirement for the record index. If such index contains any sensitive personal information, the PCAOB shall, in addition to filing electronically an unredacted copy of the record index, also electronically file one redacted copy of the index. As with Rule 420(e), the record index filed pursuant to Rule 440(d) will be made available on the Commission's website, and we expect the burden on the PCAOB of redacting the record index will be minimal. Moreover, we believe the record index will assist the public in identifying what documents are not publicly available and thereby inform any requests that the public may wish to make pursuant to FOIA, because it will list each of the documents filed in the underlying PCAOB proceeding.

The final rule renumbers proposed paragraph (d)(2) as paragraph (d)(1), and proposed paragraph (d)(1) as paragraph (d)(2). This non-substantive change mirrors the amendments we are making to Final Rule 420(e) by first identifying the documents that must be redacted (*i.e.,* the record index) and then describing the specific redaction requirements.

Final Rule 440(d)(2) articulates the definition of sensitive personal information that must be redacted from the record index. Consistent with the definition of sensitive personal information we are adopting in Final Rules 151(e) and 420(e), Final Rule 440(d)(2) modifies from the proposal the definition of sensitive health

[43] *See, e.g.,* U.S. Court of Appeals for the Third Circuit, *CM/ECF Public User Manual* 8 (Jan. 2017); U.S. Court of Appeals for the Ninth Circuit, *CM/ECF User Manual* 11 (Nov. 2016); U.S. Court of Appeals for the Tenth Circuit, *CM/ECF User's Manual* 11 (7th ed. May 2017); U.S. Court of Appeals for the Federal Circuit, *CM/ECF User Manual* 21 (Aug. 2015).

[44] 17 CFR 201.440.

[45] PCAOB letter at 2–2.

[46] *Id.*

[47] As with SRO records filed under Rule 420, persons who wish to obtain PCAOB records that are filed pursuant to Rule 440 could, consistent with current practice, submit a request to the Commission under FOIA and if disclosure is required, any documents produced would be redacted by Commission staff as appropriate under FOIA.

information to substitute the term ''unnecessary'' for the term ''sensitive,'' so that the standard for health information required to be redacted or omitted is ''unnecessary'' health information.[48] As with Rules 151(e) and 420(e), Final Rule 440(d)(2) also now requires the full redaction of taxpayer identification numbers.

As we did in Final Rules 151 and 420, we are modifying the certification in the proposed rule to substitute the word ''omitted'' for the proposed word ''excluded'' to conform the language of the certification to the prefatory language in paragraph (d). As in Final Rule 420, Final Rule 440 also renumbers the certification in proposed paragraph (d)(3) as paragraph (e) to clarify that the certification requirement applies to an application for review filed under Rule 440(a). Likewise, we are modifying Final Rule 440(e) to state that ''any filing made pursuant to this rule, other than the record upon which the action complained of was taken, must include a certification that any information described in paragraph (d)(2) of this rule has been omitted or redacted from the filing,'' to clarify that the certification requirement does not apply to the underlying record and that the certification does not cover sensitive personal information that is exempted from the redaction requirement As discussed above, we believe that the language of the certification is appropriate because it creates a clear standard that is easily applied. It is also generally consistent with the certification requirements of many federal courts.[49] We note that the alternative certification standard suggested by the commenter was in response to the proposed rule that would have required the entire record on appeal from a PCAOB proceeding to be redacted. Accordingly, the commenter's concerns should be mitigated by the Final Rule, which limits the redaction requirements to the record index.

F. Rule 351 (Transmittal of Documents to Secretary; Record Index; Electronic Copy of Exhibits; Certification)

1. Proposed Rule

Current Rule 351[50] governs the requirements regarding the transmittal of documents by a hearing officer to the Secretary of the Commission, as well as the preparation, issuance, and certification of a record index in such administrative proceedings. We proposed to amend Rule 351(b) to reduce from fifteen days to three days the length of time a party may file proposed corrections to the record index. We also proposed to amend the rule to provide persons who oppose the proposed corrections three days to file an opposition.

Proposed new Rule 351(c) would require the parties to submit electronically copies of all exhibits admitted during the hearing, exhibits offered but not admitted during the hearing, and post-hearing exhibits.[51] Such evidence would be submitted in the form and manner prescribed in the materials posted on the Commission's website.

Proposed Rule 351(c) would set forth the same definition of ''sensitive personal information'' contained in Proposed Rule 151(e) and would require its redaction or omission from all documents submitted under Rule 351(c). Proposed Rule 351(c)(1)(ii) would provide that if the person submitting record exhibits and other documents or items that are not attached to filings believes that sensitive personal information contained therein is necessary to the proceeding, the person would file unredacted documents, along with a motion for a protective order under Rule 322 to limit disclosure of unredacted sensitive personal information. Proposed Rule 351(c)(2) would provide that a person who reasonably cannot submit exhibits electronically must file a certification explaining why the person cannot comply, and indicate the expected duration of the person's reasonable inability to comply. Upon filing the certification, the person would submit originals of any exhibits that have not already been submitted to the Secretary of the Commission by other means.

Proposed Rule 351(c)(3) would state that electronic submissions that require a signature pursuant to Rule 153 may be signed with an ''/s/'' notation, which would be deemed the signature of the person making the filing for purposes of Rule 153.[52]

Under Proposed Rule 351(c)(4), the parties would need to certify that exhibits and other documents or items submitted to the Secretary under the rule: (i) Are true and accurate copies of exhibits that were admitted or offered and not admitted during the hearing; and (ii) that any sensitive personal information as defined in Rule 351(c) has been excluded or redacted, or, if necessary to the proceeding, has been filed under seal pursuant to Rule 322.

2. Comments Received

We did not receive any comments specifically addressing the proposed amendments to Rule 351. But, as discussed above, two commenters generally objected to the Commission's proposed definition of ''sensitive personal information.'' [53]

3. Final Rule

We are adopting the amendments to Rule 351 substantially as proposed, but with certain modifications to Final Rule 351(c) that are designed to conform with other modifications that we are adopting today. Consistent with the modifications to the proposed SRO and PCAOB record redaction requirements under Final Rules 420 and 440, and for the same reasons, we are modifying the redaction requirements under proposed Rule 351(c). We are similarly revising Rule 351(c) to make clear that electronic filing of the record will be done in form and manner as specified by the Office of the Secretary in materials posted on the Commission's website. Under Final Rule 351(c), parties will not be required to exclude or redact sensitive personal information from exhibits before submitting them to the Office of the Secretary because the exhibits will not be posted to the Commission's website.[54] Because the redaction of sensitive personal information will not be required under the amended rule, the final rule eliminates the definition of sensitive personal information in Proposed Rule 351(c)(1) and the redaction certification in Proposed Rule 351(c)(4)(ii).

Final Rule 351(c) requires the parties to submit electronic copies of all exhibits within five days after the Secretary serves a final record index. We did not receive any comments on this aspect of the proposal, but we acknowledge that the proposing release erroneously contained two different calculations of the deadline. Section II.D. of the proposing release stated that electronic submissions of exhibits would be required ''no later than five days after the Secretary serves a final

[48] *See* discussion *supra* at Sections II.A.3 and II.D.3.

[49] *See supra* n.43.

[50] 17 CFR 201.351.

[51] As discussed *infra* in Section II.F.3, there was a discrepancy in the proposing release regarding the deadline for the post-hearing submission of exhibits. Section II.D. stated that submissions would be required ''no later than five days after the Secretary serves a final record index'' but the proposed rule text in Section VI. erroneously stated that submissions would be required ''[w]ithin two weeks after the close of a hearing.''

[52] 17 CFR 201.153 (Filing of Papers: Signature Requirement and Effect).

[53] *See supra* at II.A.2.

[54] Nothing in Final Rule 351 should be construed as limiting or precluding the redaction or omission of sensitive personal information under other Rules of Practice or by order of the Commission or hearing officers. *See, e.g.,* 17 CFR 201.230(b), 17 CFR 201.322.

record index,'' and thereby incorporated the process for finalizing the record index under Proposed Rule 351(b). But the rule text proposed in Section VI. stated that such electronic submissions would be required ''[w]ithin two weeks after the close of a hearing,'' which potentially could have required parties to submit exhibits before receiving and reviewing the final record index under Proposed Rule 351(b). We believe that Final Rule 351(b) and Final Rule 351(c) will encourage an orderly and efficient post-hearing process for the parties to assemble and organize the exhibits, then review and if necessary correct the record index prepared by the Secretary, and then appropriately submit and certify copies of exhibits for Commission review.

We are also modifying Final Rule 351(c)(4) to clarify that the certification applies to exhibits that were admitted during the hearing, exhibits that were offered but not admitted during the hearing, ''or any other exhibits that were admitted after the hearing.'' The final certification language conforms with the electronic submission requirements in Final Rule 351(c), which requires the parties to submit to the Office of the Secretary a copy of ''all exhibits that were admitted, or offered and not admitted, during the hearing, and any other exhibits that were admitted after the hearing.''

We are adopting the remaining amendments to Rule 351 as proposed, except that while we are allowing, as proposed, an ''/s/'' signature for electronic filings, upon further consideration we are clarifying that, in those situations, the filer's login and password into the eFAP system will be deemed the signature for each filing. We further note that we did not receive any comments to the proposed amendments to Rule 351(b) about the time in which parties can file proposed corrections to the index and an opposition to the proposed corrections, and we continue to believe such deadlines are appropriate given the increased speed and efficiency of electronic transmission of documents such as the record index.

G. Rule 150 (Service of Papers by Parties)

Rule 150 currently governs service of papers by parties in administrative proceedings. Under Rule 150(a), each paper, including each notice of appearance, written motion, brief, or other written communication shall be served upon each party in the proceeding in accordance with the rule. Current Rule 150(c)[55] prescribes the various methods of service permitted under the rule, which include personal service, mailing by U.S. Postal Service, sending the papers through a commercial courier service or express delivery service, or transmitting the papers by facsimile, where certain conditions are satisfied. We proposed to amend Rule 150(c) to require parties to serve each other electronically in the form and manner that is prescribed in the materials posted on the Commission's website. As we noted in the proposing release, electronic service by email is a practice that already appears to occur in Commission administrative proceedings. The Instructions issued by the Office of the Secretary today therefore reflect current electronic service practice in our administrative proceedings.

The proposal also provided that a party who reasonably could not comply with the electronic service requirement would need to file a certification under new Rule 150(c)(1) that explains why the person reasonably could not comply and indicating the expected duration of the person's reasonable inability to comply (such as whether the certification is intended to apply to a single instance of service or all instances of service made during the proceeding). The certification would be effective immediately and become part of the record of the proceeding upon filing, and upon filing such certification the person could then serve paper documents by any additional method listed in Rule 150(d).

We also proposed to amend Rule 150(d) to provide for additional methods of service if a person reasonably cannot comply with the electronic service requirements, or if service is of an investigative subpoena pursuant to 17 CFR 203.8. The methods of service would be those permitted under current Rule 150(c), but the provision for service by facsimile would be amended to eliminate certain outdated or unnecessary conditions, such as the requirement to provide the Commission and other parties with notice of the hours of facsimile machine operation. The proposal also would eliminate the requirement that facsimile transmissions be received during the Commission's business hours. Under Proposed Rule 150(e),[56] electronic service would be deemed complete upon transmission.

We did not receive any comments on our proposed amendments to Rule 150 and are adopting the rule as proposed with minor modifications to account for situations where a party has not provided a valid email address or is unable to file documents electronically. As noted in the Instructions posted on the Commission's website, participants in administrative proceedings should serve their documents upon each party in the proceeding by email, contemporaneously with the filing of the documents in the eFAP system.[57] Filing a document electronically in the eFAP system will not effectuate service upon the parties to the proceeding (including the Division of Enforcement) as required by Rule 150(a). As with several other rules as described above, we have also revised Rule 150(c) to make clear that electronic filing of documents are to be done in the form and manner as specified by the Office of the Secretary in materials posted on the Commission's website

Service of documents by the Office of the Secretary of the Commission upon participants in the proceeding will be done through the eFAP system and routed to the participant's email address of record. As explained in the Instructions, the eFAP system will generate an email notifying the participant of service of the document and the email will include link(s) to the document(s) served by the Office of the Secretary.

Pursuant to Final Rule 150(e), electronic service is complete upon transmission. Thus, failure to open the email or download the documents served will not render service ineffective. But electronic service is not effective if the sender learns that the transmission failed.

H. Additional Amendments

1. Rule 102 (Appearance and Practice Before the Commission)

Rule 102(d)[58] requires a person appearing in an administrative proceeding either on his own behalf or in a representative capacity to provide to the Commission, and keep current, certain contact information, such as address and telephone number that may be used during the proceeding. Consistent with the introduction of electronic filing and service, we proposed to amend Rule 102(d) to require that both a mailing address and an email address must be provided under paragraphs (d)(1), (d)(2), and (d)(4). We did not receive any comments on the proposed amendments and are adopting the rule as proposed, with one implementing change.

[55] 17 CFR 201.150(c).

[56] 17 CFR 201.150(e).

[57] 17 CFR 201.151(a). Service is contemporaneous if it is completed reasonably promptly after a document is filed.

[58] 17 CFR 201.102(d).

Specifically, we are amending Rule 102(d) to require that, within ten days of the Compliance Date, any individual appearing on his or her own behalf before the Commission or hearing officer in a proceeding as defined in Rule 101(a) that is ongoing on that date shall electronically file a notice that complies with section (d)(1). Likewise, any person appearing in a representative capacity before the Commission or hearing officer in a proceeding as defined in Rule 101(a) that is ongoing on that date shall electronically file a notice that complies with section (d)(2). The notices shall be served in accordance with Rule 150(a).[59] Participants are directed to electronically file a Rule 102(d) compliant notice in their ongoing proceedings even if a prior Rule 102(d) paper filing included the participant's email address. This will enable the Office of the Secretary to begin electronically serving documents upon participants in administrative proceedings after the Compliance Date.[60]

2. Rule 140 (Commission Orders and Decisions; Signature and Availability)

Rule 140(a)[61] requires the Secretary or other authorized person to sign Commission orders and decisions. We proposed to amend the rule to provide that the signature may be an electronic signature that consists of an ''/s/'' notation or any other digital signature. The Commission did not receive any comments on this aspect of the proposal. We are adopting the amendment as proposed.

3. Rule 141 (Orders and Decisions: Service of Orders Instituting Proceedings and Other Orders and Decisions)

Rule 141 governs service of Orders Instituting Proceedings (''OIPs'') and other orders and decisions issued by the Commission or a hearing officer in administrative proceedings. We proposed to amend Rule 141(b) relating to service of orders other than OIPs or decisions[62] to allow the Secretary to serve such orders and decisions electronically or by any of the additional methods of service authorized by Proposed Rule 150(d). These methods would be in addition to the means of service permitted under current Rule 141(a). We did not receive any comments on the proposed amendments to Rule 141 and are adopting the amendments as proposed.[63]

4. Rule 193 (Applications by Barred Individuals for Consent to Associate)

Rule 193[64] governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies, or transfer agents, for consent to become so associated. Rule 193 currently provides that an original and three copies of an application shall be filed under Rules 151, 152, and 153, and that such application shall be supported by a manually signed affidavit. Consistent with the transition to electronic filing and service, we proposed to delete the term ''manually,'' delete the reference to one original and three copies, and leave the cross reference to Rules 151, 152, and 153 to account for electronic filing. We did not receive any comments on this aspect of the proposal and are adopting these amendments as proposed with minor modifications to move a preliminary note in current Rule 193 into the text of the rule as a new paragraph (a), without otherwise modifiying the preliminary note's text, and to redesignate the other paragraphs accordingly.

III. Compliance Date for the Final Rules

As proposed, persons subject to the electronic filing requirements would have been required to comply with the final rules on the effective date. Commenters sought an extended implementation period for compliance with the final rules.[65] Two commenters sought a one-year implementation period for the electronic filing requirement to take effect.[66] According to one of the commenters, a longer implementation period would allow it to prepare for electronic filing by converting its own case processing to an all-electronic system.[67] The second commenter requested a one-year implementation period to allow it to ''develop, test, and improve responsive processes for managing any sensitive personal information in [its] administrative proceedings.''[68] A third commenter advocated for a compliance period of ''six months or more.''[69]

The amended rules will become effective 30 days after publication in the **Federal Register** (Effective Date). After considering the comments, the Commission has decided to require compliance with the amended rules on April 12, 2021 (Compliance Date). The requirements of the amended rules will apply to all filings, transmissions or submissions to the Commission that are required to be made on or after the Compliance Date.[70]

The Commission believes this compliance period will provide an appropriate period of time that balances the interests of parties in administrative proceedings to prepare for electronic filing, while continuing to advance the Commission's goal of enhancing accessibility of its administrative proceedings. Moreover, in light of the current Commission guidance encouraging parties to submit by email and our decision to modify, from the proposal, the redaction requirements for records submitted under Rules 351, 420 and 440, we do not believe a longer implementation period is necessary because the universe of records subject to redaction should be significantly reduced and parties have already been submitting documents electronically.

IV. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[71] that these revisions relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility

[59] The Commission is extending Rule 102(d) to ongoing proceedings because it is a purely a procedural requirement that the Commission deems necessary to implement our electronic filing system in an orderly and timely fashion. *See James V. Hurson Ass'n* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2002) (citing *JEM Broadcasting Co.* v. *FCC,* 22 F.3d 320 (D.C. Cir. 1994)) (a procedural rule that an agency need not adopt through notice-and-comment rulemaking, in contrast to a substantive rule that must be adopted through notice-and-comment rulemaking, ''covers agency actions that do not themselves alter rights or interest of parties, although it may alter the manner in which parties present themselves or their viewpoints to the agency'').

[60] Additionally, as noted in the Instructions, participants should make a new Rule 102(d) filing whenever they wish to change their email address used for service.

[61] 17 CFR 201.140.

[62] 17 CFR 201.141(b).

[63] As proposed, we are adopting one ministerial change to Rule 141(a) to refer generically to ''express mail'' rather than a particular U.S. Postal Service product.

[64] 17 CFR 201.193.

[65] FINRA letter; NYSE letter; PCAOB letter; FSR letter.

[66] FINRA letter; PCAOB letter.

[67] FINRA letter at 7.

[68] PCAOB letter at 3.

[69] FSR letter at 10–11.

[70] The eFAP system will not be accessible to filers prior to the Compliance Date.

[71] 5 U.S.C. 553(b)(3)(A).

Act[72] therefore does not apply.[73] Nonetheless, the Commission previously determined that it would be useful to publish the proposed rules for notice and comment before adoption. The Commission has considered all comments received. Because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' they are not subject to the Small Business Regulatory Enforcement Fairness Act.[74] To the extent these rules relate to agency information collections during the conduct of administrative proceedings, they are exempt from review under the Paperwork Reduction Act.[75]

I. Other Matters

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.

V. Economic Analysis

The Commission is sensitive to the costs and benefits of its rules. The current processes and filing requirements for administrative proceedings serve as the baseline against which the economic impacts of the adopted rules are measured. At present, submissions are permitted to be filed with the Commission in paper format or by facsimile followed by a paper submission.[76] The Commission's current Rules of Practice do not identify sensitive personal information that must be redacted from these documents by those who file them. Instead, such redaction is undertaken by the Commission when necessary in responding to document requests from the public or posting documents on the Commission's public website. Service by email is already generally an accepted practice by parties to administrative proceedings who mutually agree to it, although it is not expressly permitted by rule.

We continue to believe that the scope of the benefits and costs of the adopted rules will depend on the expected volume of administrative proceedings and the number of filed documents and document requests associated with these proceedings. New proceedings initiated and not immediately settled in fiscal years 2018 and 2019 totaled 206 and 223 respectively, similar to the number of litigated proceedings reported for previous years in the proposing release.

In fiscal years 2018 and 2019, an average of approximately 2,700 filings were submitted per year in relation to litigated proceedings, including filings by outside parties as well as Commission staff. These filings consist of one or more documents, such as motions, briefs, and record exhibits, and the length of the filings generally ranges from one page to a few thousand pages. It is difficult to predict whether the number of filings in future years will increase or decrease relative to these levels. A degree of volatility in the volume of filings is expected as the number, types, and complexity of proceedings varies over time. The frequency of litigated proceedings and volume of filings hereafter may also either increase or decrease as a result of recent amendments to the Commission's Rules of Practice that, for example, extended the potential length of the prehearing period, provided parties to proceedings with additional opportunities to conduct depositions, and clarified the ability of both sides to a proceeding to make certain dispositive motions in certain types of proceedings.[77]

The Commission receives numerous requests from the public to release documents related to administrative proceedings. Requests for records related to administrative proceedings (both settled and litigated) numbered 46 and 26 for fiscal years 2018 and 2019 respectively.[78] In 2014, the Commission also began regularly making certain substantive filings such as significant pleadings and motions by outside parties in administrative proceedings available to the public by posting them on its public website.[79] In fiscal years 2018 and 2019, filings posted to SEC.gov were accessed 542,811 and 633,763 times, respectively, further demonstrating public interest in documents related to administrative proceedings.

The implementation of electronic filing and the related adopted rules are intended to improve the efficiency and transparency of the Commission's operations and to modernize the document management process to be consistent with common practice in other tribunals. Benefits of the adopted rules are anticipated to accrue to the public and outside parties to administrative proceedings as well as the Commission.

Specifically, the adopted rules may benefit members of the public with an interest in the Commission's administrative proceedings by permitting the Commission to more quickly make public the documents relating to these proceedings, both when posting documents directly to the Commission's public website and when responding to requests. One commenter described the proposed rules as ''an important first step to improve the public's access to filings in administrative proceedings.'' [80] The Commission's response to document requests and public posting of documents is expected to be more time- and cost-effective due to the efficiency of electronic retrieval and the fact that the Commission's own review and redaction of documents may be expedited because sensitive information will have been redacted in advance. As discussed below, the modifications made to the redaction requirement relative to the proposal may reduce these expected benefits.

The adopted rules may increase the speed at which information from administrative proceedings is transmitted amongst parties to the proceeding as well as the broader public, and enhance the overall transparency of these proceedings. Several commenters noted that parties to administrative proceedings would likely benefit from the proposed rules.[81]

[72] 5 U.S.C. 601–612.

[73] *See* 5 U.S.C. 603.

[74] 5 U.S.C. 804(3)(C).

[75] *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4 (exempting collections during the conduct of administrative proceedings or investigations).

[76] In addition, materials for which a paper format is not possible or not appropriate, such as audio files, are submitted on electronic media such as compact disks or thumb drives. The processes and requirements for the submission of such materials in administrative proceedings will not be affected by the adopted rules, except for the requirement that an associated Notice of Manual Filing be filed and served electronically as described in the Instructions.

[77] *See, e.g., Amendments to the Commission's Rules of Practice,* Exchange Act Release No. 78319, 81 FR 50211, 50230–31 (July 13, 2016), available at *https://www.sec.gov/rules/final/2016/34-78319.pdf* (last visited Nov. 17, 2020) (stating that the Commission is ''unable to precisely predict the economic effect of the final rules on administrative proceedings, as the number and type of proceedings can vary based on many factors unrelated to the Rules of Practice'').

[78] These numbers reflect the number of requests that reached the Office of the Secretary, but there might be other requests to the Commission that did not reach the Office of the Secretary.

[79] These documents are currently available at *www.sec.gov/litigation/apdocuments/ap-closed-fileno-asc.xml* for closed proceedings and *www.sec.gov/litigation/apdocuments/ap-open-fileno-asc.xml* for open proceedings.

[80] *See* Better Markets letter.

[81] *See, e.g.,* FINRA letter (stating that the ''electronic filing of materials will lower reproduction and delivery costs'') and Better Markets letter (stating that the proposed rules

Continued

Parties to administrative proceedings may benefit from the increased flexibility enabled by the changes, such as the Commission's acceptance of electronic submissions until midnight rather than the close of business on a given day. These parties may also benefit from savings on printing and mailing costs because, after the phase-in period, filing paper copies generally will not be required. In addition, the changes expressly require service by electronic means, which may increase further the savings in printing and mailing and benefit filers who telework.

The magnitude of the expected benefits of the adopted rules is difficult to quantify due to the limitations of existing data. Although commenters generally supported the idea that the proposed rules would be beneficial,[82] they also did not provide data that would allow us to quantify these benefits.

The costs of the proposal will be borne by the Commission as well as the outside parties to administrative proceedings. The adopted rules place the primary burden of redacting sensitive personal and unnecessary health information on the parties submitting documents in administrative proceedings—either outside parties or Commission staff—following common practice in federal courts. When sensitive personal or health information is necessary to the proceedings, outside parties or the Commission staff may expend additional resources filing a motion for a protective order in accordance with Rule 322 to limit disclosure of the sensitive information and to separately prepare both a redacted and unredacted version of the documents.

Commenters raised several concerns about the costs of the proposed redaction requirement. One commenter expressed concern that the redaction requirement would allow the Commission to shift its redaction costs onto other parties.[83] Another commenter claimed that the Commission failed to consider litigation costs that could arise if the Commission were to make public any documents that had not been properly redacted by a party to a proceeding.[84] Commission staff will continue to review any documents the Commission makes public, and to make redactions where necessary, though this review may be more efficient than in the past because of the prior redaction undertaken by the parties to a proceeding. Two commenters supported the idea that the parties filing documents are well positioned to undertake redaction and initially draft documents to avoid the use of sensitive personal information.[85] One of these commenters explained that this was because they ''have the most knowledge, and control over the creation, of the documents.'' [86] We therefore continue to believe that parties filing documents are well positioned to undertake this requirement and that the narrow definition of sensitive personal information in the adopted rules will limit the burden on parties required to redact documents.

The Commission recognizes, however, that the costs of reviewing and editing all filings to protect sensitive personal information and unnecessary health information would be significant for some parties. Three commenters highlighted challenges associated with redaction in cases on appeal to the Commission.[87] One of these commenters projected that it would file 114,160 pages of certified records of proceedings on appeal to the Commission in 2015. Another commenter similarly noted that its proceedings could generate ''voluminous records,'' providing examples of records with 7,000, 30,000, and 69,000 pages.[88]

In response to these concerns, we are limiting the redaction requirement to filings other than (1) any set of exhibits offered and/or admitted at a hearing (*i.e.,* filed pursuant to Rule 351) and (2) records of proceedings on appeal from SROs or the PCAOB to the Commission. In fiscal years 2018 and 2019, there were approximately 390 and 992 filings, respectively, that would have would have been subject to the redaction requirement as so limited. The exception to the redaction requirement may reduce the expected benefits of the adopted rules relative to the proposal, in that more filings will not require redaction and thus parties to the associated proceedings may file protective orders under Rule 322 for these filings. At the same time, we expect this change to significantly lower the expected burden of the electronic filing requirements on parties to administrative proceedings because, based on our experience, these documents are, on average, significantly longer and thus more burdensome to redact than other filings.[89] That said, we cannot quantitatively estimate the total remaining burden of redaction under the adopted rules because we do not have systematic data on length of filings and, as discussed above, the expected future volume of filings difficult to predict.

Parties to administrative proceedings will also bear any incremental burden of electronic filings over the current practice of facsimile or paper transmissions. The magnitude of costs will depend primarily on whether the original format of the documents to be submitted is electronic or whether they must be scanned or otherwise converted to an electronic format. The costs will also be affected by the nature of the documents relative to the logistical requirements of the electronic filing system. For example, electronic files may need to be renamed and large files may need to be broken down into separate files to be compliant with the system requirements.[90] Other factors that may affect these costs include the ease of access the party has to the internet and to any hardware and software that may be involved in processing the documents. We did not receive comments on these costs and continue to expect that, for most parties, these costs will not be significant because, among other things, most parties already are subject to similar requirements in other kinds of legal proceedings or have access to the internet and conversion programs at a reasonable cost. Further, these potential burdens may be mitigated for some parties as the adopted rules provide for relief from the electronic filing requirements in situations in which a party certifies a reasonable inability to comply with the electronic filing requirement.

As discussed above, the Commission has considered alternatives to the adopted rules, including alternative treatment of records of proceedings on appeal to the Commission. Commenters suggested alternatives based on their concerns about the burden of redacting

would ''benefit parties who are familiar with electronic-filing systems'').

[82] *See supra* notes 80 and 81. *See* also PCAOB letter (stating that they support the objective of ''making the administrative appeals process more accessible to the public and increasingly efficient''); FSR letter (stating that the proposed rules were ''commendable.''

[83] *See* Bishop letter.

[84] *See* Anonymous letter.

[85] *See* FINRA and PCAOB letters.

[86] *See* PCAOB Letter.

[87] *See* FINRA, NYSE, and PCAOB letters.

[88] *See* PCAOB letter.

[89] We acknowledge that SROs that use automated redaction might experience a smaller decrease in the expected burden.

[90] For files larger than 500 megabytes that cannot be broken down into smaller files or filings that cannot be provided in PDF format, parties may incur additional costs to submit these documents on other electronic media, such as compact disks or thumb drives. We expect the incremental costs of this requirement to be minimal as, based on our experience, such filings are typically already submitted using electronic media under the baseline. *See supra* n.76.

these records. For example, two commenters discussed the possibility of permitting additional time for the filing of the redacted copy of the record as compared to the deadline for filing the unredacted version.[91] We believe that the modification of the adopted rules to exclude these records as well as exhibits submitted under Rule 351 from the redaction requirement will allow for reduced costs of compliance relative to the proposal, but might also reduce the benefits of the proposal.

We have also considered alternatives with respect to the timing of implementation of the new filing requirements. Several commenters suggested an extended transition period or implementation delay of six months to one year.[92] Such a delay would, for example, permit individuals and entities that are regularly parties to administrative proceedings to adapt their own processes and systems to most efficiently comply with the adopted rules. While we are sensitive to the efforts that may be required to adapt to the electronic filing requirements, we believe that the modification in the adopted rules to not require the filing parties to redact records of proceedings on appeal to the Commission and exhibits submitted under Rule 351 should substantially ease this transition.

Additional alternatives to the adopted rules could involve the implementation of electronic filing with different requirements. In particular, the Commission could permit electronic filing on a voluntary, rather than mandatory, basis. While these changes might permit parties to choose the method of filing that best suits their objectives and potentially reduce the costs associated with filing, this alternative could undermine the consistency of public disclosure by establishing multiple sets of filing requirements and standards and reduce the benefits that result from efficiencies associated with electronic filing. Alternatively, the Commission could continue to allow the filing of unredacted documents, either requiring, as one commenter suggested, that the party that filed a document provide a redacted version if necessary to respond to a public request for a document [93] or that redaction be undertaken by Commission staff when necessary. Relative to these alternatives, or to the existing paper format and facsimile document submission and management system for administrative proceedings, the Commission believes that the adopted changes achieve the benefits described above in a time- and cost-efficient manner.

The Commission does not expect significant effects on efficiency, competition, or capital formation to result from the adopted changes. And to the extent that the changes impose any burden on competition, the Commission believes that such burden would be necessary and appropriate in furtherance of the purposes of the Exchange Act.[94]

V. Statutory Basis

These amendments to the Rules of Practice are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78s, and 78w; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

For the reasons set forth in the preamble, the Commission is amending title 17, part 201 of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for Part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 2. Section 201.102 is amended by revising paragraphs (d)(1), (2), and (4) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(d) * * *

(1) *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, a mailing address and email address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours. Within ten days of April 12, 2021, any individual appearing on his or her own behalf before the Commission or hearing officer in a proceeding as defined in § 201.101(a) that is ongoing on that date shall electronically file a notice that complies with this paragraph. Notices required by this section shall be served in accordance with § 201.150(a). Individuals shall electronically file a § 201.102(d) compliant notice in their ongoing proceedings even if a prior § 201.102(d) paper filing included the participant's email address.

(2) *Representing others.* When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address, email address, and telephone number; and the name, email address, and address of the person or persons represented. Within ten days of April 12, 2021, any person appearing in a representative capacity before the Commission or hearing officer in a proceeding as defined in § 201.101(a) that is ongoing on that date shall electronically file a notice that complies with paragraph (d)(2) of this section. Notices required by this section shall be served in accordance with § 201.150(a). Participants are directed to electronically file a § 201.102(d) compliant notice in their ongoing proceedings even if a prior § 201.102(d) paper filing included the participant's email address.

* * * * *

(4) *Withdrawal.* Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, mailing address, email address, and telephone number of the withdrawing representative; the name, email address, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, mailing address, email address, and telephone number of the new representative, or knows that the person for whom the

[91] *See* FINRA and PCAOB letters.

[92] *See* FINRA, FSR, NYSE and PCAOB letters.

[93] *See* PCAOB letter (suggesting that this alternative could be used, for a limited trial period, for records in proceedings on appeal to the Commission).

[94] *See* 15 U.S.C. 78w(a)(2).

appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on the parties in accordance with § 201.150. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

* * * * *

■ 3. Section 201.140 is amended by revising paragraph (a) to read as follows:

§ 201.140 Commission orders and decisions: Signature and availability.

(a) *Signature required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission. The signature may be an electronic signature that consists of an ''/s/'' notation or any other digital signature.

* * * * *

■ 4. Section 201.141 is amended by:
■ a. Removing the words ''Express Mail'' wherever they appear and adding in their place the words ''express mail''; and
■ b. Revising the first sentence of paragraph (b).

The revision reads as follows:

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

* * * * *

(b) * * * Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c) and (d). * * *

■ 5. Section 201.150 is amended by:
■ a. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e);
■ b. Adding new paragraph (c);
■ c. Revising newly redesignated paragraphs (d) introductory text and (d)(4);
■ d. Revising newly redesignated paragraph (e); and
■ e. Removing the words ''Express Mail'' wherever they appear and adding in their place the words ''express mail''.

The revisions and addition read as follows:

§ 201.150 Service of papers by parties.

* * * * *

(c) *How made.* Service shall be made electronically in the form and manner to be specified by the Office of the Secretary in the materials posted on the Commission's website. Persons serving each other shall have provided the Commission and the parties with notice of an email address.

(1) *Certification of inability to serve electronically.* If a person reasonably cannot serve electronically (due, for example, to a failure to have a functional email address or a lack of access to electronic transmission devices due to incarceration or otherwise), the person promptly shall file a certification under this paragraph that explains why the person reasonably cannot comply using any additional method of service listed in § 201.150(d). The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary instance of service or all instances of service made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may serve paper documents by any additional method listed in § 201.150(d).

(2) [Reserved].

(d) *Additional methods of service.* If a person reasonably cannot serve electronically, or if service is of an investigative subpoena pursuant to 17 CFR 203.8, service may be made by delivering a copy of the filing. *Delivery* means:

* * * * *

(4) Transmitting the papers by facsimile transmission to the person required to be served. The persons so serving each other shall have provided the Commission and the parties with notice of a facsimile machine telephone number.

(e) *When service is complete.* Electronic service is complete upon transmission, but is not effective if the sender learns that the transmission failed. Personal service, service by U.S. Postal Service express mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission.

■ 6. Section 201.151 is amended by revising paragraphs (a) and (d) and adding paragraph (e) to read as follows:

§ 201.151 Filing of papers with the Commission: Procedure.

(a) *When to file.* All papers required to be served upon any person shall also be filed contemporaneously with the Commission electronically pursuant to the requirements of § 201.152(a). The person making such filing is responsible for ensuring that the Commission receives a complete and legible filing within the time limit set for such filing. Documents that are attached to filings shall be filed in accordance with this section.

* * * * *

(d) *Certificate of service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.

(e) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any unnecessary health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(1) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(i) The last four digits of a financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(ii) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(iii) Business telephone numbers; and

(iv) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(2) *Confidential treatment of information.* If the person making any filing believes that sensitive personal information (as defined above) contained therein is necessary to the proceeding, the person shall file unredacted documents, along with a motion for a protective order with redacted documents, in accordance with § 201.322 to limit disclosure of unredacted sensitive personal information.

(3) *Certification.* Any filing must include a certification that any information described in paragraph (e) of this section has been omitted or redacted from the filing or, if necessary to the filing, has been filed under seal pursuant to § 201.322.

■ 7. Section 201.152 is amended by:
■ a. Removing paragraph (d);
■ b. Redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d);

■ c. Adding new paragraph (a);
■ d. Revising newly redesignated paragraphs (b), (c), and (d); and
■ e. Adding new paragraph (g).

The revisions and addition read as follows:

§ 201.152 Filing of papers: Form.

(a) *Electronic filing.* Papers filed in connection with any proceeding as defined in § 201.101(a) shall be filed electronically in the form and manner to be specified by the Office of the Secretary in the materials posted on the Commission's website. Papers filed electronically must be received by the Commission by midnight Eastern Time on the date the filing is due.

(1) *Certification of Inability to File Electronically.* If a person reasonably cannot comply with the requirements of this section, due to a lack of access to electronic transmission devices (due to incarceration or otherwise), the person promptly shall file a certification under this paragraph that explains why the person reasonably cannot comply using any additional method of filing listed in § 201.152(a)(2). The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary filing or all filings made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person may file paper documents by any additional method listed in § 201.152(a)(2).

(2) *Additional methods of filing.* If a person reasonably cannot file electronically, filing may be made by hand delivering the filing by 5:30 p.m. Eastern Time through a commercial courier service or express delivery service; mailing the filing through the U.S. Postal Service by first class, certified, registered, or express mail delivery so that it is received by the Commission by 5:30 p.m. Eastern Time; or transmitting the filing by facsimile transmission so that it is received by the Commission by midnight Eastern Time.

(b) *Form.* Papers filed in connection with any proceeding as defined in § 201.101(a) shall:

(1) Reflect a page, electronically or otherwise, that measures 8½ x 11 inches when printed, except that, to the extent that the reduction of larger documents would render them illegible when printed, such documents may be filed on larger paper;

(2) Use 12-point or larger typeface;

(3) Include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch; and

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations.

(c) *Signature required.* All papers must be dated and signed as provided in § 201.153. Electronic filings that require a signature pursuant to § 201.153 may be signed with an ''/s/'' notation, but in that event, the use of the filer's log in and password to file a document shall be deemed the signature of the person making the filing for purposes of § 201.153.

(d) *Suitability for recordkeeping.* Documents which, in the opinion of the Office of the Secretary, are not suitable for computer scanning may be rejected.

* * * * *

(g) *Interim Procedures for Filing Papers with the Commission in Both Electronic and Paper Format.* For the initial 90-day period beginning on April 12, 2021, papers filed in connection with any proceeding as defined in § 201.101(a) shall be filed both electronically in accordance with paragraph (a) of this section and, in addition, in paper format or by email at *apfilings@sec.gov.* If filed in paper format, an original and three copies of all paper filings must be submitted to the Office of the Secretary in accordance with any of the delivery methods set forth in paragraph (a)(2) of this section.

§ 201.152 [Amended]

■ 8. Effective, July 12, 2021, amend § 201.152 by removing paragraph (g).9.
Section 201.193 is amended by:
■ a. Redesignating paragraphs (a) through (f) as (b) through (g);
■ b. Revising the Preliminary Note; and
■ c. Revising newly redesignated paragraph (c) introductory text.

The revisions read as follows:

§ 201.193 Applications by barred individuals for consent to associate.

(a) *Preliminary note.* This section governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this section must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the section, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

(1) The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

(2) Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

(3) In addition to the factors set forth in paragraph (d) of this section, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to § 202.5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, § 202.5(e) sets forth the Commission's policy ''not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings.'' Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this section was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or

collaterally attack the findings that resulted in the Commission's bar order.

* * * * *

(c) *Form of application.* Each application shall be supported by an affidavit, signed by the applicant, that addresses the factors set forth in paragraph (d) of this section. The application shall be filed pursuant to §§ 201.151, 152 and 153. Each application shall include as exhibits:

* * * * *

■ 10. Section 201.322 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e); and

■ c. Adding new paragraph (b).

The revision and addition read as follows:

§ 201.322 Evidence: Confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 201.101(a), a party, any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence, or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details.

(b) *Submission of confidential information.* If review of the documents that are the subject of a request for a protective order is necessary to a ruling on the motion and the information as to which a protective order is sought is available to the movant, the motion shall be accompanied by:

(1) A complete, sealed copy of the materials containing the information as to which a protective order is sought, with the allegedly confidential information marked as such, and with the first page of the document labeled ''Under Seal.'' If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties; and

(2) A redacted copy of the materials containing the information as to which a protective order is sought, with the allegedly confidential information redacted. The redacted version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the sealed version. A redacted copy need not accompany a motion requesting a protective order if the materials would be redacted in their entirety.

* * * * *

■ 11. Section 201.351 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (b);

■ c. Redesignating paragraph (c) as paragraph (d); and

■ d. Adding new paragraph (c).

The revisions and addition read as follows:

§ 201.351 Transmittal of documents to Secretary; record index; electronic copy of exhibits; certification.

* * * * *

(b) *Preparation, certification of record index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within three days of service of the record index. Any opposition to the proposed corrections shall be filed within three days of service of the proposed corrections. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Electronic exhibits.* No later than five days after the Secretary serves a final record index, the parties shall submit electronically to the Secretary a copy of all exhibits that were admitted, or offered and not admitted, during the hearing, and any other exhibits that were admitted after the hearing. The parties shall submit such evidence in the form and manner to be specified by the Office of the Secretary in the materials posted on the Commission's website.

(1) *Certification of Inability to Submit Exhibits Electronically.* A person who reasonably cannot submit exhibits electronically must file a certification under § 201.351(c)(1) that explains why the person reasonably cannot comply. The filing also must indicate the expected duration of the person's reasonable inability to comply, such as whether the certification is intended to apply to a solitary submission or all submissions made during the proceeding. The certification is immediately effective. Upon filing the certification, it will be part of the record of the proceeding, and the person shall submit originals of any exhibits that have not already been submitted to the Secretary by other means.

(2) *Signature requirement.* Electronic submissions that require a signature pursuant to § 201.153 may be signed with an ''/s/'' notation, but in that event, the use of the filer's login and password to file a document shall be deemed the signature of the person making the submission for purposes of § 201.153.

(3) *Certification.* The parties shall certify that exhibits and other documents or items submitted to the Secretary under this section are true and accurate copies of exhibits that were admitted, or offered and not admitted, during the hearing, or any other exhibits that were admitted after the hearing.

* * * * *

■ 12. Section 201.420 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

* * * * *

(e) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file electronically in the form and manner to be specified by the Office of the Secretary in the materials posted on the Commission's website one unredacted copy of the record upon which the action complained of was taken.

(1) The self-regulatory organization also shall file electronically with the Commission one copy of an index to such record, and shall serve upon each party one copy of the index. If such index contains any sensitive personal information, as defined in paragraph (e)(2) of this section, the self-regulatory organization also shall file electronically with the Commission one redacted copy of such index, subject to the requirements of paragraph (e)(2) of this section.

(2) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address

(other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any unnecessary health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(C) Business telephone numbers; and

(D) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(f) *Certification.* Any filing made pursuant to this section, other than the record upon which the action complained of was taken, must include a certification that any information described in paragraph (e)(2) of this section has been omitted or redacted from the filing.

■ 13. Section 201.440 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

* * * * *

(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file electronically in the form and manner to be specified by the Office of the Secretary in the materials posted on the Commission's website one unredacted copy of the record upon which it took the complained-of action.

(1) The Board shall file electronically with the Commission one copy of an index of such record, and shall serve one copy of the index on each party. If such index contains any sensitive personal information, as defined in paragraph (d)(2) of this section, the Board also shall file electronically with the Commission one redacted copy of such index, subject to the requirements of paragraphs (d)(2) of this section.

(2) *Sensitive personal information.* Sensitive personal information is defined as a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, state-issued identification number, home address (other than city and state), telephone number, date of birth (other than year), names and initials of minor children, as well as any unnecessary health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings subject to:

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a financial account number, credit card or debit card number, passport number, driver's license number, and state-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission;

(C) Business telephone numbers; and

(D) Copies of unredacted filings by regulated entities or registrants that are available on the Commission's public website.

(e) *Certification.* Any filing made pursuant to this section, other than the record upon which the action complained of was taken, must include a certification that any information described in paragraph (d)(2) of this section has been omitted or redacted from the filing.

By the Commission.

Dated: November 17, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9932]

RIN 1545–BO95

Certain Employee Remuneration in Excess of $1,000,000 Under Internal Revenue Code Section 162(m)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations under section 162(m) of the Internal Revenue Code (Code), which for Federal income tax purposes limits the deduction for certain employee remuneration in excess of $1,000,000. These final regulations implement the amendments made to section 162(m) by the Tax Cuts and Jobs Act and finalize the proposed regulations published on December 20, 2019. These final regulations affect publicly held corporations.

DATES:

Effective Date: These regulations are effective on December 30, 2020.

Applicability Dates: For dates of applicability, see § 1.162–33(h).

FOR FURTHER INFORMATION CONTACT: Ilya Enkishev at (202) 317–5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (''Treasury regulations'' (26 CFR part 1) under section 162(m)). Section 162(m)(1) disallows a deduction by any publicly held corporation for applicable employee remuneration paid or otherwise deductible with respect to any covered employee to the extent that such remuneration for the taxable year exceeds $1,000,000. Section 162(m) was added to the Code by section 13211(a) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66. Proposed regulations under section 162(m) were published in the **Federal Register** on December 20, 1993 (58 FR 66310) (1993 proposed regulations). On December 2, 1994, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued amendments to the proposed regulations (59 FR 61884) (1994 proposed regulations). On December 20, 1995, the Treasury Department and the IRS issued final regulations under section 162(m) (TD 8650) (60 FR 65534) (1995 regulations).

Section 162(m) was amended by section 13601 of the Tax Cuts and Jobs Act (TCJA) (Pub. L. 115–97, 131 Stat. 2054, 2155 (2017)). Section 13601 of TCJA amended the definitions of covered employee, publicly held corporation, and applicable employee remuneration in section 162(m). Section 13601 also provided a transition rule applicable to certain outstanding compensatory arrangements (commonly referred to as the grandfather rule). On August 21, 2018, the Treasury Department and the IRS released Notice 2018–68 (2018–36 I.R.B. 418), which provides guidance on certain issues under section 162(m).

On December 20, 2019, the Treasury Department and the IRS published proposed regulations (REG–122180–18) relating to the amendments TCJA made to section 162(m) in the **Federal Register** (84 FR 70356) (the proposed regulations). The changes to section 162(m) made by section 13601 of TCJA and the initial guidance provided by