

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release Nos. 34-48167; IA-2144; File No. S7-10-00]

RIN 3235-AD21

Electronic Filing by Investment Advisers; Amendments To Form ADV; Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission is adopting technical revisions to Forms ADV, ADV-W and ADV-H and related rules under the Investment Advisers Act of 1940, which were published in the *Federal Register* on September 22, 2000 (65 FR 57437). The amendments are designed to aid advisers in the completion and filing of Forms ADV, ADV-W and ADV-H by clarifying certain instructions to the forms.

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Don L. Evans, Senior Counsel, at 202-942-0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is adopting technical amendments to rules 0-4, 203-1, 203-3, and 204-1 [17 CFR 275.04, 275.203-1, 275.203-3, and 275.204-1] and to Forms ADV, ADV-W and ADV-H [17 CFR 279.1, 279.2 and 279.3] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act"). The Commission is also withdrawing rule 203A-6 [17 CFR 275.203A-6] under the Advisers Act.

I. Discussion

Investment advisers today utilize the Investment Adviser Registration Depository ("IARD"), a one-stop electronic filing system, to make registration and "notice" filings with the SEC and state regulators over the Internet. In conjunction with launching electronic filing for advisers in 2000, the Commission adopted several rules and rule amendments under the Advisers Act, related to the IARD.¹ Certain administrative issues have arisen regarding these revised rules and forms,

and we are making technical amendments to address these issues.²

II. Rule and Form Amendments

A. Rule 0-4: General Requirements of Papers

We are amending rule 0-4 to extend filing deadlines when the IARD is closed to filings. Electronic filings otherwise required to be made in late December, when the IARD is shut down to process state renewals, must be filed on or before the following January 7. Other IARD filings required to be made on a day the IARD is closed to filings will be considered timely if filed on the following business day.³

B. Rule 204-1: Amendments to Application for Registration

We are deleting language in rule 204-1(b) that set out the transition period to IARD for SEC-registered advisers; this transition period ended April 30, 2001.⁴ We are also amending the rule to clarify that advisers must file all amendments to Part 1A of Form ADV electronically with the IARD absent a continuing hardship exemption.

C. Form ADV: Uniform Application for Investment Adviser Registration; Part 1A, Item 7: Financial Industry Affiliations

We are revising the instructions to Form ADV, Part 1A, Items 7A and 7B. The change to Item 7A accommodates advisers that share personnel with an affiliated broker-dealer. NASD will accept a single Form U-4 filing, through IARD, to register an individual both as the advisory firm's investment adviser representative and as a registered representative of the advisory firm's affiliated broker-dealer, provided the adviser names the affiliated brokerage firm on its Form ADV.⁵ Duplicative Form U-4 filings by an adviser and its affiliated broker-dealer create

unnecessary burdens; as a convenience to filers, we are amending Part 1A, Item 7 to permit (but not require) an adviser to name, on Section 7.A. of Schedule D, any related persons that are broker-dealers.

Another change, to Item 7B, allows an adviser to cross-reference to the Form ADV of its SEC-registered affiliate in order to disclose the limited partnerships and limited liability companies that the affiliate advises.⁶ An SEC-registered adviser may omit, from Section 7.B. of Schedule D, the details of LPs or LLCs managed by its related persons that are also SEC-registered advisers, so long as the adviser explains in the miscellaneous section of Schedule D that the detailed list is available on the related person's Form ADV.⁷ In order to pass a "completeness check" on the IARD, however, all advisers that answer "yes" to Item 7B must list at least one LP or LLC in Section 7.B of Schedule D. The IARD will not allow an adviser to file a Form ADV that fails the completeness check.

III. Effective Date; Findings Under the Administrative Procedure Act

The technical amendments adopted today shall become effective July 11, 2003. An adviser is not required to file a separate amendment to its Form ADV solely to reflect these revisions. However, when it next files a Form ADV (including amending its Form ADV), Form ADV-W or Form ADV-H on or after the effective date, the adviser must use the rules and forms as revised.⁸ These amendments make minor, technical changes to the manner in which advisers submit registration information to the Commission through

⁶ A number of advisers currently follow this procedure in reliance on the SEC staff response to a "frequently asked question" on the SEC's IARD website.

⁷ This explanation must state: (1) That the adviser has related SEC-registered investment advisers who manage investment related LPs or LLCs that are not listed in Section 7.B of its Schedule D, (2) that complete and accurate information about those investment related LPs or LLCs is available in Section 7.B of Schedule D of the Form ADVs of the related SEC-registered advisers; and (3) whether the adviser's clients are solicited to invest in any of those LPs or LLCs. If the adviser has a related person that is a general partner in an investment-related LP or manager of an investment-related LLC, and that related person is *not* registered with the SEC as an investment adviser, the adviser must continue to list all LPs and LLCs of that related person in Section 7.B of its own Schedule D.

⁸ An adviser filing a Form ADV amendment through the IARD on or after the effective date will necessarily be submitting the revised version of the form. Because the revisions to Section 7.A of Schedule D add data fields, advisers may need to re-enter their responses to that Section. Advisers should review their responses to all of the affected sections of the Form carefully to ensure that they remain correct and complete.

¹ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

² In addition to the changes detailed below, we are (i) revising the Form ADV-H Item 1B language to refer to "Item 12 of Part 1A" of Form ADV rather than simply "Item 12", (ii) clarifying that Instruction 3 to Form ADV-W applies only to state-registered advisers, and (iii) amending rules 203-1, 203-3 and 204-1, the General Instructions to Form ADV, and Form ADV-W to reflect the correct name of the IARD operator due to a NASD corporate restructuring in the fall of 2002.

³ Rule 0-4(a)(2) [17 CFR 275.0-4(a)(2)].

⁴ We are also deleting rule 203A-6, which set out the transition period from SEC registration for certain advisers located in Ohio; this transition period ended March 30, 2000.

⁵ The Form U-4 is the NASD uniform application for securities industry registration or transfer. Investment advisers submit Form U-4 through IARD to register investment adviser representatives with state securities authorities; broker-dealers submit it through the Central Registration Depository (CRD) for their registered representatives.

the IARD, or eliminate outdated or confusing material contained in the rules and instructions for submitting such information. Therefore, the Commission finds that there is good cause to adopt them as final rules. Moreover, the amendments impose no new obligations on advisers; they are “rules of agency * * * procedure” that fall within exceptions to the general notice and comment requirements of the Administrative Procedure Act.⁹

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁰

As discussed above, the rule and form amendments will aid advisers in the completion of Forms ADV, ADV-W and ADV-H. The technical amendments may enhance efficiency further by clarifying the forms and their instructions, thereby improving an adviser’s understanding of IARD and eliminating duplicative filings.

Because the rule and form amendments apply equally to all advisers, we do not anticipate that any competitive disadvantages would be created. We do not expect the amendments, as technical changes, to have an effect on capital formation or the capital markets.

V. Statutory Authority

We are adopting amendments to rule 0–4, General Requirements of Papers, under sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11(a)].

We are adopting amendments to rule 203–1, Application for Investment Adviser Registration, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

⁹ 5 U.S.C. 553(b)(3)(A) and (B). For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

¹⁰ 15 U.S.C. 80b–2(c).

We are adopting amendments to rule 203–3, Hardship Exemptions, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are withdrawing rule 203A–6 [17 CFR 275.203A–6], Transition Period for Ohio Investment Advisers, under section 203(h) [15 U.S.C. 80b–3(h)]; section 203A(c) [15 U.S.C. 80b–3a(c)]; and section 211(a) [15 U.S.C. 80b–11(a)] of the Investment Advisers Act of 1940.

We are adopting amendments to rule 204–1, Amendments to Application for Registration, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 77sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 78a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.2, Form ADV-W, under sections 203(h), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(h), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.3, Form ADV-H, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

Need for Technical Amendment

As published, the final regulations contain errors which need to be clarified.

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule and Form Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 2. Paragraph (a) of § 275.04 is revised to read as follows:

§ 275.0–4 General requirements of papers and applications.

(a) *Filings.* (1) All papers required to be filed with the Commission shall, unless otherwise provided by the rules and regulations, be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules and regulations, such papers shall be deemed to have been filed with the Commission on the date when they are actually received by it.

(2) All filings required to be made electronically with the Investment Adviser Registration Depository (“IARD”) shall, unless otherwise provided by the rules and regulations in this part, be deemed to have been filed with the Commission upon acceptance by the IARD. Filings required to be made through the IARD on a day that the IARD is closed shall be considered timely filed with the Commission if filed with the IARD no later than the following business day.

(3) Filings required to be made through the IARD during the period in December of each year that the IARD is not available for submission of filings shall be considered timely filed with the Commission if filed with the IARD no later than the following January 7.

Note to Paragraph (a)(3): Each year the IARD shuts down to filers for several days during the end of December to process renewals of state notice filings and registrations. During this period, advisers are not able to submit filings through the IARD. Check the Commission’s Web site at <http://www.sec.gov/iard> for the dates of the annual IARD shutdown.

* * * * *

■ 3. Part 275 is amended by:

■ a. Revising the term “NASD Regulation, Inc. (NASDR)” to read “NASD” in: §§ 275.203–1(d) and 275.204–1(b)(3).

■ b. Revising the term “NASD Regulation, Inc.” to read “NASD” in § 275.203–3(b)(3).

■ c. Revising the term “NASDR” to read “NASD” in the following sections:

1. 275.203–1(d);
2. 275.203–3, Note to Paragraph (b); and
3. 275.204–1(d) each time it appears.

■ 4. Section 275.203A–6 is removed and reserved.

■ 5. Section 275.204–1 is amended by:

- a. Adding a note at the end of paragraph (a);
- b. Revising paragraph (b); and
- c. Revising the first sentence of paragraph (d).

The addition and revisions read as follows.

§ 275.204-1 Amendments to application for registration.

(a) * * *

Note to Paragraph (a): Information on how to file with the Investment Adviser Registration Depository ("IARD") is available on our website at www.sec.gov/iard.

(b) *Electronic filing of amendments.*

(1) You must file all amendments to Part 1A of your Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under § 275.203-3.

(2) If you have received a continuing hardship exemption under § 275.203-3, you must, when you are required to amend your Form ADV, file a completed Part 1A of Form ADV on paper with the SEC by mailing it to the NASD.

* * * * *

(d) *Filing fees.* You must pay the NASD (the operator of the IARD) an initial filing fee when you first electronically file Part 1A of Form ADV.

* * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

- 6. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

- 7. Form ADV (referenced in § 279.1) is amended by:

- a. In the form and instructions to the form, revising the terms "NASDR", "NASD Regulation, Inc.", "National Association of Securities Dealers Regulation, Inc. ("NASDR")", and "National Association of Securities Dealers, Inc. ("NASD")" to read "NASD";
- b. In the instructions to the form, revising the heading "Supplemental Instructions for Transition to Electronic Filing" to read "Supplemental Instructions for Electronic Filing" and within those Supplemental Instructions revising the section entitled "SEC Requirements";

- c. In Part 1A, revising the unnumbered paragraph in Item 7A. and Item 7B.; and
- d. In Schedule D, revising Section 7.A.

The revisions read as follows:

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Supplemental Instructions for Electronic Filing

SEC Requirements

SEC rules require advisers that are registered or applying for registration with the SEC to file electronically. All applications for registration filed after December 31, 2000 must be filed electronically through the IARD system. See SEC rule 203-1.

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Part 1A

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Item 7 Financial Industry Affiliations

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A. * * *

If you checked Item 7A.(3), you must list on Section 7.A. of Schedule D all your *related persons* that are investment advisers. If you checked Item 7A.(1), you may elect to list on Section 7.A. of Schedule D all your *related persons* that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

B. * * *

If "yes," for each limited partnership or limited liability company, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser *and* you have *related persons* that are *SEC-registered* advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D:

(1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D;

(2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and

(3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

* * * * *

Schedule D

* * * * *

SECTION 7.A. Affiliated Investment Advisers and Broker-Dealers

You **MUST** complete the following information for each investment adviser with whom you are affiliated. You **MAY** complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

Check only one box: ☐ Add

☐ Delete ☐ Amend

Legal Name of Affiliate:

Primary Business Name of Affiliate:

Affiliate is (check only one box): ☐

Investment Adviser ☐ Broker-Dealer ☐ Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any) 801-

Affiliate's CRD Number

(if any) _____

* * * * *

- 8. Form ADV-W (referenced in § 279.2) is amended by:

- a. In Instruction 3, revising the first undesignated paragraph;

- b. In Instruction 3, revising the first sentence in the second undesignated paragraph;

- c. In Instruction 3, revising the second sentence in the third undesignated paragraph;

- d. In Instruction 5, revise the phrase "NASD Regulation, Inc." to read "NASD;" and

- e. In the Execution section, revise the fourth sentence.

The revisions read as follows.

Note: The text of Form ADV-W does not and this amendment will not appear in the Code of Federal Regulations.

Form ADV-W

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Instructions for Form ADV-W

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3. I am a state registered adviser filing for partial withdrawal. How do I complete Item 2?

If you are a state registered adviser ceasing advisory business in any of the jurisdictions from which you are withdrawing, check "yes." * * *

* * * You are permitted to enter a cease date of December 31 to avoid being charged state renewal fees in jurisdictions from which you are withdrawing (during the last part of December each year the IARD suspends filing operations for several days to process renewals of state registrations and state notice filings; and you are

unable to submit any filings during that time). * * *

Execution

* * * I understand that if any information contained in items 1D or 1E of this Form ADV-W is different from the information contained on Form ADV, the information on this Form ADV-W will replace the corresponding entry on the adviser's Form ADV composite available through IARD.
* * *

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■ 9. Form ADV-H (referenced in § 279.3) is amended by revising the phrase "Item 12 of Form ADV" in the third and fourth unnumbered paragraphs in Item 1B. to read "Item 12 of Part 1A of Form ADV".

Note: Form ADV-H does not and this amendment will not appear in the Code of Federal Regulations.

Dated: July 11, 2003.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-18122 Filed 7-16-03; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 4, 2003 (68 FR 33381). The document amended the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Combe, Inc., to Farnam Companies, Inc. The document was published with some errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-827-7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03-14107, appearing on page 33381 in the **Federal Register** of June 4, 2003, the following corrections are made:

■ 1. On page 33381, in the first column, in the "SUMMARY", the word "Farnham" is corrected to read "Farnam".

■ 2. On page 33381, in the second column, in the sixth line from the bottom, "\$ 524.1580b [Amended]" is corrected to read "\$ 524.1376 [Amended]".

Dated: July 7, 2003.

Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 03-18086 Filed 7-16-03; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for the addition of tylosin tartrate to an approved subcutaneous implant containing trenbolone and estradiol used for increased rate of weight gain and improved feed efficiency in feedlot heifers.

DATES: This rule is effective July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301-827-0232; edubbin@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200-346 for COMPONENT TE-H (trenbolone acetate and estradiol), a subcutaneous implant used for increased rate of weight gain and improved feed efficiency in heifers fed in confinement for slaughter. The supplemental ANADA provides for the addition of a pellet containing 29 milligrams tylosin tartrate to the approved implant. The supplemental application is approved as of April 18, 2003, and the regulations are amended

in 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning April 18, 2003.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.2477 is amended in paragraph (b)(1) by adding "(d)(2)(i)(B)," after "(d)(2)(i)(A)," in paragraph (b)(2) by removing "(d)(2)" and by adding in its place "(d)(2)(i)(A), (d)(2)(i)(C), (d)(2)(i)(D), (d)(2)(ii), (d)(2)(iii)"; in paragraph (d)(2)(i)(A) by removing "paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B)" and by adding in its place "paragraph (d)(2)(ii)(A)"; by redesignating paragraphs (d)(2)(i)(B) and (d)(2)(i)(C) as paragraphs (d)(2)(i)(C) and (d)(2)(i)(D); and by adding new paragraph (d)(2)(i)(B) to read as follows: