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 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. In § 522.2471, revise paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) to read as follows:

§ 522.2471 Tilmicosin.

* * * * *

(e) * * *

(1) * * *

(i) *Amount*. 10 to 20 milligrams per kilograms (mg/kg) of body weight as a single subcutaneous injection.

(ii) *Indications for use*. For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni*. For the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*.

(iii) *Limitations*. Do not use in female dairy cattle 20 months of age or older. Use of this antibiotic in this class of cattle may cause milk residues. Do not slaughter within 42 days of last treatment.

* * * * *

Dated: February 16, 2010.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–4206 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

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 new animal drug application (NADA) filed by ADM Alliance Nutrition, Inc. The supplemental NADA provides for use of a higher concentration chlortetracycline Type A medicated article for the manufacture of medicated feeds for livestock and poultry.

DATES: This rule is effective March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115, filed a supplement to NADA 48–480 that provides for the use of CHLORATET 50 (chlortetracycline), a Type A medicated article containing 50 grams of chlortetracycline per pound, for the manufacture of medicated feeds for livestock and poultry. The supplement provides for use of Type A medicated articles containing 90 or 100 grams of chlortetracycline per pound. The supplemental NADA is approved as of January 7, 2010, and the regulations are amended in 21 CFR 558.128 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33 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 Subject in 21 CFR Part 558

Animal drugs, animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.128, revise paragraph (b)(2) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(b) * * *

(2) No. 012286: 50, 90, or 100 grams per pound of Type A medicated article.

* * * * *

Dated: February 16, 2010.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–4205 Filed 3–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB21

Multiemployer Pension Plan Information Made Available on Request

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule implementing section 101(k) of the Employee Retirement Income Security Act of 1974, as amended by the Pension Protection Act of 2006. Section 101(k) requires the administrator of a multiemployer plan to provide copies of certain actuarial and financial documents about the plan to participants, beneficiaries, employee representatives and contributing employers upon request. The final rule affects plan administrators, participants and beneficiaries and contributing employers of multiemployer plans.

DATES: This final rule is effective on April 1, 2010.

FOR FURTHER INFORMATION CONTACT: June Solonsky or Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 101(k) of the Employee Retirement Income Security Act

(ERISA), 29 U.S.C. 1021(k), added by section 502(a)(1) of the Pension Protection Act of 2006 (PPA),[1] provides that the administrator of a multiemployer pension plan, upon written request, shall furnish copies of certain actuarial and financial documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that are required to be furnished are: (A) A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess a civil penalty of not more than $1,000 a day for each violation of section 101(k).[2] Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

On September 14, 2007, the Department published in the **Federal Register** a proposed rule under section 101(k) of ERISA and invited interested parties to comment.[3] The Department received four written comments on the proposal. Copies of these comments are posted on the Department's Web site at *http://www.dol.gov/ebsa.* After careful consideration of the issues raised by the written comments, the Department is adopting the final rule contained herein. While the Department has made some clarifying changes to both the structure and provisions of the rule, the final rule, described below, is substantially the same as the proposal.

B. Overview of Final Rule and Comments

1. General § 2520.101–6(a)

Paragraph (a) of the final rule, like the proposal, sets forth the general requirement under section 101(k) that the administrator of a multiemployer pension plan furnish copies of certain actuarial and financial documents. These documents must be furnished in accordance with paragraph (b) of the regulation. The specific documents required to be furnished are described in paragraph (c) of the final rule. A new paragraph (d) has been added to the final rule for purposes of consolidating and clarifying exceptions to and limitations on an administrator's obligation to furnish requested documents. Paragraph (e) describes the persons entitled to request documents for purposes of section 101(k).

2. Obligation To Furnish § 2520.101–6(b)

Paragraph (b) of the final rule is substantially the same as the proposal. Paragraph (b)(1) requires that, except as provided in paragraph (d), requested documents must be furnished not later than 30 days after receipt of the written request.

Paragraph (b)(2) of the final rule focuses on delivery and requires requested documents to be furnished in accordance with the delivery requirements of 29 CFR 2520.104b–1, including paragraph (c) relating to the use of electronic delivery.

Paragraph (b)(3) of the proposal addressed the limitation on a requester's ability to request the same document more than once in any 12-month period. As part of the consolidation mentioned above, this limitation now appears in paragraph (d)(1) of the final rule and is discussed in connection with that paragraph.

Paragraph (b)(3) of the final rule addresses the ability of a plan administrator to impose reasonable charges to cover the cost of furnishing the requested documents. The PPA specifically authorized the imposition of reasonable charges for the furnishing of documents pursuant to section 101(k). For this purpose, the Department proposed (see paragraph (b)(4) of the proposal) that a reasonable charge may not exceed the lesser of the actual cost to the plan for the least expensive means of acceptable reproduction of the document, or 25 cents per page, plus the cost of mailing or otherwise delivering the requested document. This standard adopts the existing reasonable charge standard under 29 CFR 2520.104b–30 but also permits the plan administrator to charge the requester the actual cost to the plan of mailing or delivering the requested document. One commenter suggested that the 25 cents per page portion of the reasonable charge standard should be lowered due to advances in reproduction technology. The commenter suggested a maximum of 10 cents per page for black and white reproductions. Although the Department recognizes that advances in document copying may reduce costs in many cases, the Department has not adopted this suggestion because it lacks sufficient information at this time to prescribe an alternative maximum charge. The Department notes, however, that under the rule as adopted plans may never charge more than the actual cost of the least expensive method of reproduction used by the plan. Therefore, as plans adopt more efficient, less costly reproduction methods, the amounts charged to participants, beneficiaries and others will be reduced accordingly.

3. Documents To Be Furnished § 2520.101–6(c)

Paragraph (c) of the final rule, like the proposal, describes the documents that must be furnished pursuant to section 101(k).

Paragraph (c)(1)(i) of the proposal provided for the disclosure of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days prior to the date of the written request. Two commenters requested clarification of this provision. One commenter requested that the final regulation limit disclosure under paragraph (c)(1)(i) to reports that actuaries produce at regularly scheduled, recurring intervals, such as reports in connection with annual valuations. The other commenter, however, was concerned that such a limitation could exclude relevant sensitivity testing not provided routinely or in regular cycles. In response to these comments, the Department has included language in the final regulation, at paragraph (c)(1), that limits and clarifies the disclosure obligations with respect to actuarial reports.

As modified, paragraph (c)(1) provides that the term "periodic actuarial report" means any actuarial reports prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals. A plan administrator, therefore, would be required pursuant to this provision to disclose copies of any actuarial report prepared in connection with the annual valuation or pursuant to the requirements of section 305 of ERISA. The final regulation also makes clear that the term "periodic actuarial report" includes studies, tests (including sensitivity tests), documents, analyses or other information (whether or not

[1] Pub. L. 109–280, 120 Stat. 780.

[2] On January 2, 2009, the Department published in the Federal Register a final rule, effective March 3, 2009, that establishes procedures relating to the assessment of civil penalties by the Department under section 502(c)(4) of ERISA. See 74 FR 17.

[3] 72 FR 52527.

called a "report") received by the plan from an actuary of the plan that depict alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not received by the plan at regularly scheduled, recurring intervals. Thus, under this provision, a plan administrator would be required to disclose any sensitivity testing that the plan may request occasionally, such as in response to a certification of critical or endangered status.

The limitation that only those periodic actuarial reports in the plan's possession for at least 30 days are required to be disclosed is included in paragraph (d) of the final rule addressing limitations and exceptions.

Paragraph (c)(1)(ii) of the proposal provided that a document subject to disclosure includes a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days before the plan receives the written request. The parenthetical language "without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act" clarifies for plan administrators that financial reports subject to disclosure include those prepared by investment advisors regardless of such advisors' ERISA fiduciary status.

The Department requested comment on whether, in addition to the above clarification, a financial report made available for disclosure under section 101(k) should be further defined. The Department received one comment in response. The commenter expressed concern that the definition of financial report in the proposal could result in overly burdensome requests because the proposed language could be read to require disclosure of every document prepared for a board of trustees meeting by any outside professional or internal fiduciary, so long as the document has any financial aspect to it. Therefore, the commenter recommended limiting the scope of disclosure only to investment-related reports (*e.g.,* investment manager reports, investment advisor reports, and investment consultant reports) and fund auditor reports received by the plan annually, semi-annually or quarterly. While the Department believes that investment-related reports are a primary object of the new disclosure requirement, the statutory language does not limit the type of quarterly, semi-annual or annual financial reports subject to this new disclosure to only those that are investment-related. The Department, therefore, is adopting this provision without change. See paragraph (c)(2) of § 2520.101–6.

The limitation that only those financial reports in the plan's possession for at least 30 days are required to be disclosed is included in paragraph (d) of the final rule addressing limitations and exceptions.

Paragraph (c)(1)(iii) of the proposal required the disclosure of applications filed with the Secretary of the Treasury requesting an extension under section 304 of this Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application. There were no comments on this provision. Accordingly, the provision is being adopted without change. See paragraph (c)(3) of § 2520.101–6.

Paragraph (c)(2) of the proposal described the extent to which underlying data, individually identifiable information and proprietary information is not required to be disclosed for purposes of section 101(k). These provisions are set forth in paragraph (d), discussed below, describing limitations and exceptions.

4. Limitations and Exceptions § 2520.101–6(d)

Paragraph (d) of the final regulation consolidates the limitations and exceptions applicable to the disclosure requirements under section 101(k). In general, paragraph (d) describes the reports, applications and information that are not subject to disclosure under section 101(k). For purposes of paragraph (d) of the final rule, the word "application" should be read as including any determination by the Secretary of the Treasury on such application.

(a) 12-Month Limit

Paragraph (d)(1) addresses the 12-month limit on requests. As proposed, the limitation made clear that a plan administrator is not required to furnish to any requester more than one copy of a document during any 12-month period. One commenter argued that tracking the 12-month period on a request-by-request basis may be unnecessarily burdensome and suggested, instead, that plans have the flexibility to choose static or fixed periods, such as plan or calendar years. The Department has not adopted this suggestion. The Department, however, has clarified the operative language of the regulation as it relates to the timing of the 12-month period. Pursuant to paragraph (d)(1) of the final rule, a plan administrator is not required to furnish any report or application that has been furnished to the requester within the 12-month period immediately preceding the date on which the request was received by the plan. As noted in the preamble to the proposal, there is no requirement that a plan impose such a limitation on requests. Accordingly, plans are free to limit the costs and administrative burdens attendant to tracking document request periods simply by not imposing the limitation on requesters.

(b) Aged Documents

Paragraph (d)(2) of the final regulation deals with aged documents. The Department received two comments suggesting that the regulation limit a plan administrator's obligation to furnish copies of outdated reports. One commenter expressed concern that the proposal did not limit in any way requests for documents dating back indefinitely and that such requests could create severe administrative burdens on plan administrators who might, for example, be required to search for documents from decades past. A second commenter suggested that financial reports become less useful to requesters as newer versions of these reports become available and, therefore, a plan administrator's obligation to furnish aged documents need not extend indefinitely into the past. Both commenters suggested a maximum period approximating the period applicable to records required to be kept under the record retention requirements in section 107 of ERISA. The Department agrees that the obligations of an administrator should not be unlimited with respect to aged documents. The Department also agrees that limiting an administrator's obligation in a manner consistent with the six-year record retention requirement of section 107 would preserve the right of requesters to request and obtain relevant documents without imposing undue burdens on plan administrators. The Department, therefore, has modified the regulation to exclude from the documents required to be furnished under section 101(k) those reports and applications that have been in the plan's possession for 6 years or more as of the date on which the request was received by the plan. See paragraph (d)(2) of § 2520.101–6.

(c) 30-Day Exception

Paragraph (d)(3) of the final rule addresses the disclosure exception applicable to those reports that have not been in the possession of the plan for at least 30 days. One commenter on the proposed regulation requested

clarification of a plan administrator's obligation to furnish a requested report within 30 days from the request when the plan has not had possession of the report for 30 days at the time of the request. Paragraph (b)(1) of the proposal provided that a report must be furnished not later than 30 days after the date the written request is received by the plan. However, paragraph (c)(1) of the proposal provided that a report is not required to be disclosed until it has been in the plan's possession for at least 30 days prior to the date of a written request. The Department addresses this issue in paragraph (d)(3) of the final rule by providing an exception to the otherwise applicable disclosure rule for any reports that, as of the date a request is received by the plan, has not been in the plan's possession for at least 30 days. However, because requesting parties may not know about this limitation on their right to receive reports, the final rule also provides that, in connection with the exercise of this limitation, the plan administrator must furnish a timely notice—not later than 30 days after the date on which the request was received by the plan—informing the requester of the existence of the report and the earliest date on which the report can be furnished by the plan. With such information, requesting parties are in a position to determine whether and when to further pursue their request, while at the same time not requiring plans to prematurely disclose the requested report(s).

(d) Underlying Information and Data Exception

Paragraph (d)(4) addresses the disclosure exception for information and data underlying reports and applications required to be disclosed. One commenter questioned whether this limitation, as set forth in paragraph (c)(2)(i) of the proposal, is consistent with the requirements of section 101(k). The commenter also requested clarification of the scope of the limitation. It is the view of the Department that in enacting section 101(k), Congress was sufficiently specific in its reference to documents subject to the disclosure requirements to conclude that it did not intend to include within the scope of required disclosure all information and data used to develop or support the identified documents. The Department, therefore, has retained the exception in the final rule as proposed.[4] By way of an example in applying the final rule, while a plan's annual valuation report typically would be required to be disclosed under paragraph (c)(1) of the final rule, the plan's asset statement or documents consisting of participant census data used to create that report would be subject to the limitation in paragraph (d)(4) of the final rule.

(e) Individually Identifiable and Proprietary Information Exception

Paragraph (d)(5) of the final rule addresses the disclosure exception relating to individually identifiable information and proprietary information.

The proposal provided, in paragraph (c)(2)(ii)(A), that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer. One commenter was concerned that this provision might be construed as prohibiting identification of the investment manager or advisor who prepared a financial report or whose performance is under review in a report. Following the publication of the proposed regulation, Congress amended section 101(k) in the Worker, Retiree and Employer Recovery Act of 2008[5] to provide that the exception for individually identifiable information does not apply to an investment manager or adviser or to any other person (other than an employee of the plan) preparing a financial report described in section 101(k)(1)(B). The Department has conformed the final rule to this amendment. See paragraph (d)(5)(i) of § 2520.101–6.

Paragraph (c)(2)(ii)(B) of the proposed regulation, consistent with ERISA section 101(k)(2)(C)(ii), provided that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. Neither the statute nor the proposal defined the term "proprietary information," but the proposal specifically requested comment on whether clarification is needed with respect to determinations regarding what information should be considered proprietary in this context and, if so, what standards should govern such determinations.

One commenter expressed concern that the proposal granted too much discretion to plan administrators in determining what information the plan must disclose, particularly with respect to proprietary information regarding the plan (as opposed to proprietary information of contributing employers or entities providing services to the plan). The commenter recommended that the final regulation specifically define what information may be considered proprietary information and, with respect to proprietary information regarding the plan, no information should be considered proprietary unless its dissemination would be significantly adverse to the operation of the plan. Another commenter was generally supportive of the approach taken in the proposal, but suggested that the final regulation should have a special "safe harbor" rule on proprietary information regarding entities providing services to the plan. Such a rule, according to the commenter, would preclude plan administrators from disclosing any information that a service provider considers to be proprietary in nature, taking into account state laws and other standards and precedents applicable to the service provider.

After careful consideration of the issues raised by the commenters, the Department has modified paragraph (d)(5) of the final rule to clarify the proprietary information exception. Like the proposal, the plan administrator is responsible for deciding what information is proprietary in nature. In this regard, a plan administrator may not redact information unless he or she reasonably determines that it is proprietary. The Department believes that use of the proprietary information exception from the disclosure requirements of section 101(k) will be rare.

In an effort to clarify the exception, the final rule defines the term "proprietary information" for purposes of section 101(k) and the regulation. Paragraph (d)(5)(ii) of the final rule provides that "proprietary information" means trade secrets and other non-public information (*e.g.,* processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the plan, may cause, or increase a reasonable risk of, financial harm to the plan, a contributing employer, or entity providing services to the plan. In addition, the final regulation provides,

[4] The Department further notes that section 101(k) of ERISA and section 502(a)(3) of the PPA expressly grant the Department the authority to prescribe regulations under section 101(k). In addition, the Department has broad rulemaking authority under section 505 of ERISA to prescribe regulations necessary or appropriate to carry out the provisions of title I of ERISA. It is the view of the Department that the provisions of the final rule are consistent with the foregoing authority. The Department also notes that nothing in the limitation under paragraph (d)(4) of the final regulation shall limit any other right that a person may have to review or obtain such underlying information.

[5] Public Law 110–458, section 105(b)(1), 122 Stat. 5092, 5104.

at paragraph (d)(5)(iii), that a plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary. This approach encourages a narrow and reasoned use of the proprietary information exception, which will benefit requesting persons. At the same time, it will give plan administrators more specific authority on which to rely when they need to withhold information. The final regulation clarifies that information such as customer lists, risk evaluation tools, investment strategies, and trading strategies will often be proprietary information of the entity providing the service to the plan. On the other hand, it would not be consistent with the requirements of the regulation and section 101(k) for a plan administrator to characterize information showing poor performance, or violations of law, as "propriety information" merely to avoid disclosing it under section 101(k). Nor typically would it be consistent with section 101(k) for a plan administrator to determine that information is proprietary when the administrator knows that the information has been made available to the general public.

5. Persons Entitled To Request Documents § 2520.101–6(e)

Like paragraph (d) of the proposal, paragraph (e) of the final rule defines a person entitled to request and receive documents under section 101(k) as any participant within the meaning of section 3(7) of the Act, any beneficiary receiving benefits under the plan, any labor organization representing participants under the plan, or any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to ERISA section 4203. The Department received one comment asking whether a plan administrator would be obligated to furnish a copy of a report requested by a third party acting on behalf of a participant or beneficiary who is entitled to request documents under section 101(k). The Department has long held the view that a third party, for example an attorney or family member, is entitled to request and receive documents on behalf of a participant or beneficiary as long as the participant or beneficiary has properly authorized the release of such information to the third party and the documents are otherwise required to be disclosed to the participant or beneficiary under title I of ERISA.[6] Nothing in section 101(k) of ERISA or the final regulation is contrary to this position. Paragraph (e) of the final rule is being adopted without change from the proposal. See paragraph (e) of § 2520.101–6.

6. Miscellaneous

One commenter noted that the proposal would not have required plans to inform participants of their new rights under section 101(k) to request and receive copies of actuarial and financial documents from their plans. It is the view of the Department that a plan's summary plan description should inform participants and beneficiaries about their right to request documents required to be disclosed under section 101(k). The summary plan description is the primary vehicle under ERISA for informing participants about their rights and benefits. While amending the regulations governing the summary plan description is beyond the scope of this rulemaking, the Department will be considering changes to the statement of ERISA rights required by paragraph (t) of 29 CFR 2520.102–3, and the model statement set forth at paragraph (t)(2) of that section, to encompass the disclosure of the right to documents under section 101(k) of the Act. In this regard, the Department invites suggestions for model language and identification of any other changes necessary to update the statement of ERISA rights described in paragraph (t). Such suggestions may be submitted to *e-ori@dol.gov,* subject: Statement of ERISA rights.

7. Charges for Documents

Along with the proposed regulation under § 2520.101–6, the Department also proposed amendments to 29 CFR 2520.104b–30, which provides guidelines for assessing a reasonable charge for furnishing plan documents pursuant to ERISA section 104(b)(4) (*e.g.,* latest updated summary plan description, latest annual report, any terminal report, *etc.*). Language in § 2520.104b–30 could be construed as contrary to specific language in section 101(k) of ERISA, § 2520.101–6 and other PPA provisions amending title I of ERISA that expressly permit plan administrators to impose reasonable charges on requesters for the cost of furnishing the requested information, including handling and postage charges. Accordingly, minor conforming amendments were proposed to paragraph (a) of § 2520.104b–30. Because the Department received no comment on these amendments, they were adopted without change in the final rule.

C. Regulatory Impact Analysis

Summary

This final rule contains guidance necessary to implement section 101(k) of the Act, the requirements of which are discussed above.

Section 101(k) was added to ERISA because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer pension plan system. Providing participants and beneficiaries, employee representatives, and contributing employers with greater access to actuarial and financial information regarding their plans will increase the transparency of multiemployer pension plans and afford all parties interested in the financial viability of such plans greater opportunity to monitor their funding and financial status and to take appropriate action when necessary.

By clarifying certain terms used in section 101(k) of the Act, this regulation will also permit multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty. The increase in transparency of plan operations may also contribute to a greater sense of accountability to plan participants and beneficiaries on the part of plan officials. These benefits have not been quantified.

The cost of the multiemployer plan disclosure requirement under section 101(k) of the Act and the final rule is expected to total approximately $2.4 million in the year of implementation,[7] $2.1 million in the second year, and $1.7 million in the third year. The ten-year total discounted cost of the statute and rule is $15.7 million.[8] These costs arise from logging in disclosure requests, copying and mailing the reports, and redacting individually identifiable and proprietary information from the reports. The total hour burden is estimated to be 47,000 hours in the first year, 42,000 in the second year and 34,000 in the third year. Both the dollar

[6] See, *e.g.,* Advisory Opinion 82–21A (Apr. 21, 1982) (referencing AO 79–82A).

[7] For purposes of this regulatory impact analysis, the Department has assumed that 2010 is the year of implementation, notwithstanding that section 101(k) of ERISA first became effective for plan years beginning after December 31, 2007. The Department uses pre-PPA requirements as the base-line for this analysis.

[8] This assumes a discount rate of 7 percent and is in 2009 Dollars. The ten-year period covers the years 2010–2019.

burden and the hour burden are projected to fall over the three-year period as interest in the aging inventory of existing documents subject to this regulation wanes. The dollar equivalent of the three-year hour burden is estimated to be $3.7 million.

The data and methodology used in developing these estimates are more fully described in the Paperwork Reduction Act section of this regulatory impact analysis.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Although the Department believes that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order, the action has been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the rule justify its costs.

In assessing the costs and benefits of the rule and associated provisions of the Act, the Department endeavored to consider all of the major activities that will be carried out pursuant to them, *e.g.,* copying and mailing the reports and redacting individually identifiable and proprietary information from the reports. Because the regulation does not require the creation of any new documents, the costs of the rule are limited to those arising from logging in requests and from copying, mailing and redacting disclosed reports.

The Department estimates that the total cost [9] per plan year over the first three-year period to comply with the regulation will average $870 for defined benefit plans and $580 for defined contribution plans. Given that total 2006 assets of multiemployer pension plans averaged about $290 million in defined benefit plans and $55 million in defined contribution plans, these annual costs average about $3 per million dollars of plan assets in defined benefit plans and $10 per million dollars of assets in defined contribution plans. The Department believes that the rule will provide participants, beneficiaries, employee representatives, and contributing employers with important information regarding the funding and financial status of multiemployer pension plans and allow them to take action where appropriate. Although the benefits of this increased transparency have not been quantified, the Department has concluded that these benefits of the rule justify its costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), the proposed regulation solicited comments on the information collections included in the regulation. The Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) contemporaneously with publication of the proposed regulation for OMB's review. Two public comments described earlier in this preamble raised issues relevant to the costs and administrative burdens attendant to the proposal. The Department took these public comments into account in revising the economic impact of the proposal and developing the revised paperwork burden analysis discussed below.

In connection with publication of this final rule, the Department submitted an ICR to OMB for its request of a new collection. OMB approved the ICR on February 21, 2010, under OMB Control Number 1210–0131, which expires on February 28, 2013. A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.* PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

[9] Total cost is the sum of the dollar burden and the dollar equivalent of the hour burden.

The final rule implements the disclosure requirements of new section 101(k) of the Act, as added by section 502(a)(1) of the PPA. As described earlier in the preamble, section 101(k)(1) of the Act requires multiemployer plan administrators, upon written request, to furnish copies of certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (1) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of ERISA (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this final regulation are found in § 2520.101–6(a), which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of certain actuarial and financial documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request. This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers for purposes of the PRA. Pursuant to § 2520.101–6(d)(5), the documents required to be disclosed shall not contain any information that the plan administrator reasonably determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report described in paragraph § 2520.101–6(c)(2); or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The plan administrator must inform the requester if any such information is withheld.

Annual Hour Burden

In order to estimate the potential costs of section 101(k) of the Act and this

final rule, the Department estimated the number of plans that would be affected. Based on data derived exclusively from the Form 5500 for the 2006 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,500 multiemployer defined benefit plans and 1,530 multiemployer defined contribution plans that would be subject to this disclosure requirement. Section 101(k) of the Act and the proposal generally did not limit the class of documents that can be requested in any way by date of creation or receipt. However, as explained in the preamble above, in response to comments received on the proposal, the final regulation limits a plan administrator's obligation with respect to aged documents. See § 2520.101–6(d)(2). Thus, for purposes of this regulatory impact analysis, the Department has assumed that plans would not respond to any requests for aged documents (*i.e.,* documents in existing inventory that were received prior to the 2004 plan year), but that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports ("actuarial reports"), quarterly, semiannual, or annual financial reports ("financial reports"), and amortization extension requests filed with the IRS ("extension requests").

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and redact reports eligible for disclosure. Redaction may be required to remove individually identifiable and proprietary information from certain reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 99,000 [10] requests to disclose existing financial reports (an average of 66 per plan), 75,000 requests for existing actuarial reports (an average of 50 per plan), and 1,500 requests for existing extension requests (an average of one per plan), and defined contribution plans will receive 64,000 requests for existing financial reports (an average of 42 per plan). Therefore, the Department estimates that multiemployer pension plans will receive a total of 240,000 requests for disclosures of existing inventory of reports at some point over the first five years starting on the effective date of the statute.

For purposes of this analysis, the Department assumes that 40 percent of the existing documents would be requested in the year section 101(k) first became effective, 30 percent in the second year, 15 percent in the third year, 10 percent in the fourth year, and 5 percent in the fifth year.[11] Although section 101(k) first became effective for plan years beginning after December 31, 2007, the final rule is not itself effective until 30 days after its publication in the **Federal Register** (2010). Therefore, the Department estimates that 70% of existing documents would be disclosed during the two years before the effective date of the regulation and these costs are accounted for in the RIA. The PRA burden analysis, however, only accounts for the hour and cost burden incurred during the year the final rule is effective and the following two years (2010–2012). Based on this allocation, the hour burdens are estimated to be 34,000 hours ($1.1 million equivalent cost) in 2010, 32,000 hours ($1.1 million equivalent cost) in 2011, and 29,000 hours ($875,000 equivalent cost) in 2012.

The Department estimates that the total hour burden associated with disclosing existing documents upon request over the three-year period (2010–2012) will be approximately 16,000 hours.[12] For purposes of this impact analysis only, this includes 15,000 clerical hours to log requests and to locate, copy, and mail paper disclosures [13] and 1,200 legal hours (1.1 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests) [14] to redact individually identifiable and proprietary information.[15] The equivalent costs of these hours are $540,000.[16]

With respect to newly created reports, the Department estimates that multiemployer defined benefit plans will receive 105,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created extension requests (an average of one per plan), and defined contribution plans will receive 92,000 requests for newly created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 231,000 requests annually for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 26,000 hours annually. This estimate includes 25,000 clerical hours to copy and mail paper disclosures and 1,300 legal hours to redact individually identifiable and proprietary information. The equivalent cost of these hours is estimated to be $785,000.

Annual Cost Burden

The main costs arising from this information collection derive from the direct costs of redacting individually identifiable and proprietary information from the reports. The Department assumes no additional costs for copying and mailing documents, because the final rule, like the proposal, allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document.[17]

The estimated total costs to redact individually identifiable and proprietary information from the existing inventory of financial reports over the three-year period 2010–2012

[10] All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

[11] This assumption is based on the expectation that interest in receiving existing documents will be high in the initial year of implementation and gradually decrease in subsequent years.

[12] 8,200 hours in 2010, 5,400 hours in 2011, and 2,700 hours in 2012.

[13] This is the product of the total documents disclosed times the percentage of documents disclosed on paper times 15 minutes (to locate, copy, and mail paper documents).

[14] The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction.

[15] The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. Documents are assumed to be disclosed on paper unless the requester has access to e-mail and requests a document that already exists in paper form.

[16] EBSA labor rate estimates are in 2009 Dollars and are based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index (June 2008, Bureau of Labor Statistics). Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average $26 per hour. Total labor cost for legal staff was estimated to average $116 per hour based on wage estimates for attorneys.

[17] One commenter expressed concern that the administrative cost of the proposed rule may have been overstated because Internet disclosure will be frequent and cost efficient. The Department notes that no distribution costs for the notices have been included in this PRA analysis because plans can charge for the cost of furnishing paper documents and the cost of electronic distribution is nominal.

are $132,000[18] and from the existing inventory of actuarial reports are $82,000.[19] The Department estimates that no costs will be incurred for redacting information from the existing inventory of extension requests. For multiemployer defined contribution plans, estimated redaction costs for existing financial reports are $134,000.[20] Therefore, the total redaction costs for the existing inventory of all reports are estimated to be $348,000.[21]

The estimated annual costs of contract work[22] to redact individually identifiable and proprietary information for newly-created financial reports would be $146,000 and $46,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created extension requests. For multiemployer defined contribution plans, the annual redaction costs for newly created financial reports are estimated to be $149,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be $341,000.

Type of Review: New collection.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Multiemployer Pension Plan Information Made Available on Request.

OMB Number: 1210–0131.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 3,037.

Frequency of Response: Occasionally.

Responses: 255,000.

Estimated Total Annual Hour Burden: 34,000 (first year); 31,000 (second year); 29,000 (third year).

Estimated Total Annual Cost Burden: $515,000 (first year); $457,000 (second year); $399,000 (third year).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. By this standard, data from the EBSA Private Pension Bulletin 2006 show that only 375 multiemployer pension plans or 12% of all multiemployer pension plans are small entities. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of the RFA, the Department hereby certifies that this rule is not likely to have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 2520 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k) and Pub. L. 109–280, § 502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

■ 2. Add and reserve § 2520.101–5 of subpart A, and add § 2520.101–6 to subpart A to read as follows:

§ 2520.101–5 [Reserved]

§ 2520.101–6 Multiemployer Pension Plan Information Made Available on Request.

(a) *In general.* For purposes of compliance with the requirements of section 101(k) of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001, *et seq.,* the administrator of a multiemployer pension plan shall, in

[18] $66,000 in 2010, $44,000 in 2011, and $22,000 in 2012.

[19] $41,000 in 2010, $27,000 in 2011, and $13,000 in 2012.

[20] $67,000 in 2010, $44,000 in 2011, and 22,000 in 2012.

[21] $174,000 in 2010, $116,000 in 2011, and $58,000 in 2012.

[22] The Department has assumed that 70% of redaction work will be contracted.

accordance with the requirements of this section, furnish copies of reports and applications described in paragraph (c) of this section to plan participants, beneficiaries, employee representatives and contributing employers, described in paragraph (e) of this section.

(b) *Obligation to furnish.* (1) Except as provided in paragraph (d) of this section, the administrator of a multiemployer pension plan shall, not later than 30 days after receipt of a written request for a report(s) or application(s) described in paragraph (c) of this section from a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, furnish the requested document or documents to the requester.

(2) The plan administrator shall furnish reports and applications pursuant to paragraph (b)(1) of this section in a manner consistent with the requirements of 29 CFR 2520.104b–1, including paragraph (c) of that section relating to the use of electronic media.

(3) The plan administrator may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed—

(i) The lesser of: (A) The actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus

(ii) The cost of mailing or delivery of the document.

(c) *Documents to be furnished.* For purposes of paragraph (a) of this section, and subject to paragraph (d) of this section, a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, shall be entitled to request and receive a copy of any:

(1) Periodic actuarial report. For this purpose the term "periodic actuarial report" means any—

(i) Actuarial report prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals; and

(ii) Study, test (including a sensitivity test), document, analysis or other information (whether or not called a "report") received by the plan from an actuary of the plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled, recurring intervals.

(2) Quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary; and

(3) Application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

(d) *Limitations and exceptions.* For purposes of this section, reports and applications (and related determinations) required to be disclosed under this section shall not include:

(1) Any report or application that was furnished to the requester within the 12-month period immediately preceding the date on which the request is received by the plan;

(2) Any report or application that, as of the date on which the request is received by the plan, has been in the plan's possession for 6 years or more;

(3) Any report described in paragraph (c)(1) and (c)(2) of this section that, as of the date on which the request is received by the plan, has not been in the plan's possession for at least 30 days; except that, if the plan administrator elects not to furnish any such document, the administrator shall furnish a notice, not later than 30 days after the date on which request is received by the plan, informing the requester of the existence of the document and the earliest date on which the document can be furnished by the plan.

(4) Any information or data which served as the basis for any report or application described in paragraph (c) of this section, although nothing herein shall limit any other right that a person may have to review or obtain such information under the Act; or

(5)(i) Any information within a report or application that the plan administrator reasonably determines to be either:

(A) individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager, adviser, or other person (other than an employee of the plan) preparing a financial report described in paragraph (c)(2) of this section; or

(B) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

(ii) For purposes of paragraph (d)(5)(i)(B) of this section, the term "proprietary information" means trade secrets and other non-public information (e.g., processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the plan, may cause, or increase a reasonable risk of, financial harm to the plan, a contributing employer, or entity providing services to the plan.

(iii) The plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary.

(iv) A plan administrator shall inform the requester if the plan administrator withholds any information described in paragraph (d)(5)(i) of this section from a report or application requested under paragraph (b) of this section.

(e) *Persons entitled to request documents.* For purposes of this section, a plan participant, beneficiary, employee representative or contributing employer entitled to request and receive reports and applications includes:

(1) Any participant within the meaning of section 3(7) of the Act;

(2) Any beneficiary receiving benefits under the plan;

(3) Any labor organization representing participants under the plan;

(4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act.

■ 3. In § 2520.104b–30, revise paragraph (a) to read as follows:

§ 2520.104b–30 Charges for documents.

(a) *Application.* The plan administrator of an employee benefit plan may impose a reasonable charge to cover the cost of furnishing to participants and beneficiaries upon their written request as required under section 104(b)(4) of the Act, copies of the following information, statements or documents: The latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. Except where explicitly permitted under the Act, no charge may be assessed for furnishing information, statements or documents as required by other provisions of the Act, which include, in part 1 of title I, sections 104(b)(1), (2), (3) and (c) and 105(a) and (c).

* * * * *

Signed at Washington, DC, this 22nd day of February 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–4097 Filed 2–26–10; 11:15 am]

BILLING CODE 4510–29–P

POSTAL SERVICE

39 CFR Parts 111 and 121

Nomenclature Change Relating to the Network Distribution Center Transition

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) and other related manuals and publications, pursuant to the ongoing transition of USPS® bulk mail centers (BMC) to network distribution centers (NDC), by replacing all text references to "BMC" with "NDC" concurrent with other DMM revisions scheduled for March 2010. The Postal Service is planning to issue DMM Issue 300 in May 2010, containing all DMM revisions from May 11, 2009 through the May 2010 issue date. The changes to the DMM described in this document will be reflected in that Issue 300 of the DMM. We are similarly revising our regulations in Part 121 of Title 39, *Code of Federal Regulations,* to reflect the BMC to NDC terminology change.

DATES: *Effective Date:* March 14, 2010.

FOR FURTHER INFORMATION CONTACT: Kevin Gunther at 202–268–7208 or Shibani Gambhir at 202–268–6256.

SUPPLEMENTARY INFORMATION:

Background: The BMC network was established in the 1970s to process Parcel Post®, Bound Printed Matter, Media Mail®, Standard Mail® and Periodicals. Fluctuations in volume and changes in the mailing habits of the public and large mailers have necessitated changes to the USPS business model relative to BMC processing and transportation. To fully utilize our existing BMC facilities and consolidate transportation, we are changing our mail flow processes through the new NDC network. As part of this change, we are converting BMCs to NDCs. We began implementation of the NDC concept in May 2009 and this transition continues to date.

The Postal Service is taking another step towards the implementation of the NDC concept by effecting the name change, from BMC to NDC, within the DMM, other related manuals and publications, and postage statements. This revision will be limited to the change in nomenclature only. There will be no changes to mailing standards, service standards, or USPS processes resulting from this action. The Postal Service expects to be proposing changes to the standards surrounding the preparation, entry, and deposit of mailpieces pursuant to final implementation of the NDC concept. Any such changes will be the subject of future **Federal Register** notices.

As a reminder, on August 3, 2009, the Postal Service changed all of its applicable labeling lists to effect the name change from BMC to NDC. At that time, mailers were provided a 73-day transitional period to make the changes to their software applications. Mailers are now urged to review their operations to assure that these software changes have been made.

One of these nomenclature changes will update the description of the "BMC Presort" (or "BMC PRSRT") and "OBMC Presort" (or "OBMC PRSRT") price markings, for Parcel Select® mailpieces, in DMM 402.2.5.2. Mailers will be required to change these markings to "NDC Presort" (or "NDC PRSRT") and "ONDC Presort" (or "ONDC PRSRT") respectively. Mailers will also be required to make changes to the human-readable content line, corresponding to the content identifier number (CIN), of those sack and tray labels bearing a BMC reference, as displayed in DMM Exhibit 708.6.2.4, *3-Digit Content Identifier Numbers.* Similar to the period allowed for changes to labeling lists, mailers will be provided a 73-day transitional period, from March 14, 2010, with an effective date of May 26, 2010, to make changes to their software applications.

With this action, the Postal Service will be revising the text of the DMM, including all applicable Publication 95, *Quick Service Guide,* and Notice 123, *Price List,* references as follows:

Current text	Revised text
Bulk Mail Center	Network Distribution Center.
BMC	NDC.
Destination Bulk Mail Center	Destination Network Distribution Center.
DBMC	DNDC.
Origin Bulk Mail Center	Origin Network Distribution Center.
OBMC	ONDC.
Return Bulk Mail Center	Return Network Distribution Center.
RBMC	RNDC.

In addition, we are revising the caption title of 39 CFR 121.1 to correctly capitalize the term "First-Class Mail."

The Postal Service adopts changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1. The Postal Service also amends 39 CFR Part 121.

List of Subjects in 39 CFR Part 111 and 121

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 and 121 are amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3633, and 5001.

[The USPS will process a global name substitution from "Bulk Mail Center" to "Network Distribution Center," from "BMC" to "NDC," from "Destination Bulk Mail Center" to "Destination Network Distribution Center," from "DBMC" to "DNDC," from "Origin Bulk Mail Center" to "Origin Network Distribution Center," from "OBMC" to "ONDC," from "Return Bulk Mail Center" to "Return Network Distribution Center," and from "RBMC to RNDC;" revising Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) effective March 14, 2010. These revisions will not be separately itemized as a part of this document.]