Department of the Treasury
Preliminary Plan for Retrospective Analysis of Existing Rules
May 18, 2011

I. Executive Summary of Preliminary Plan and Compliance with Executive Order 13563

Background: Executive Order 13563 ("Improving Regulation and Regulatory Review") sets forth principles and requirements designed to promote public participation, improve integration and innovation, increase flexibility, ensure scientific integrity, and increase retrospective analysis of existing rules. Section 6 of the Executive Order emphasizes the importance of retrospective analysis of rules and requires agencies to

> develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

The Treasury Department's plan is designed to create a defined method and schedule for identifying certain significant rules that are obsolete, unnecessary, excessively burdensome, or ineffective. Its review processes are intended to facilitate the identification of rules that warrant repeal or modification, or strengthening, complementing, or modernizing rules where necessary or appropriate.

The Department of the Treasury is organized into components including the Departmental Offices and the operating bureaus. The Departmental Offices are primarily responsible for the formulation of policy and management of the Department as a whole, while the operating bureaus carry out the specific operations assigned to the Department. U.S. Customs and Border Protection (CBP) is considered part of the Departmental Offices for purposes of the regulations pertaining to the Treasury-retained, customs revenue functions. Rulemakings of all of these components are part of the Treasury Department's plan.

Summary of Plan: On an annual basis, members of the public will be provided with an opportunity to suggest to each bureau the specific regulations or other guidance that should be updated or amended as part of a targeted revision. The regulatory staff at each bureau will evaluate the public suggestions as well as projects recommended by personnel, and each bureau will consult with the appropriate policy official within Departmental Offices about significant targeted regulatory projects that should be prioritized for review. As part of the Department's evaluation process, the public may be provided with the opportunity to provide additional input on the prioritization of regulatory review projects. The Department, in close consultation with each bureau, will

select and publicly announce the priority regulatory review projects and provide an explanation of the bases of those selections. To the extent practicable, the selected priority projects will be placed on a separate "fast track" review workflow.

II. Scope of Plan

a. Bureaus and Offices within the Treasury Department that are included in this plan:

- Departmental Offices (DO)
- Alcohol and Tobacco Tax and Trade Bureau (TTB)
- Bureau of Engraving and Printing (BEP)
- Bureau of the Public Debt (BPD)
- Financial Crimes Enforcement Network (FinCEN)
- Financial Management Service (FMS)
- Internal Revenue Service (IRS)
- U.S. Mint (Mint)

b. The types of documents covered under this plan include:

- Existing significant regulations
- Pending significant proposed rules

When determined appropriate by a Treasury bureau or office, the provisions of this plan may be applied to existing regulations that have not been designated as significant regulatory actions, as that term is defined by Executive Order 12866 ("Regulatory Planning and Review"), guidance documents, and to information collections under the Paperwork Reduction Act.

III. Public Access and Participation

a. Notice in the Federal Register seeking public input on developing plans.

The Department published a request for information in the Federal Register on March 28, 2011 (76 FR 17572). http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=TREAS-DO-2011-0003

b. Brief summary of public comments.

The Department received eleven comments in response to the Federal Register notice. The comments are summarized briefly in the Appendix to this plan.

The Department appreciates the efforts of the commenters in providing thoughtful suggestions and recommendations. Several of the comments have been incorporated in this plan including many of the factors recommended for identifying rules for review. The comments are available in the electronic docket on www.regulations.gov.

c. Other public outreach.

In addition to posting the notice on regulations.gov and the regulations.gov/exchange, the Department also made the notice available on its open.gov website.

IV. Current Agency Efforts Already Underway Independent of E.O. 13563

- In 1992, the IRS created an annual Guidance Priority List ("GPL") that identifies issues that it intends to address in public guidance that year. Public guidance includes regulations, revenue rulings, revenue procedures, Internal Revenue Bulletin (IRB) notices, and announcements. The public is invited to suggest items that should be included in the GPL through an invitation published in the IRB and the tax press.[1] The GPL is available on the IRS website at http://www.irs.gov/foia/article/0,,id=181687,00.html.

- The IRS recently reviewed its procedures regarding the issuance of regulations to ensure compliance with Executive Orders 12866 and 13563 , the Regulatory Flexibility Act 5 U.S.C. § 601 et seq.), the Administrative Procedure Act (5 U.S.C. chapter 5), and the Congressional Review Act (5 U.S.C. § 801 et seq.), which resulted in expanded and clarified instructions and information for IRS regulation drafters.

- TTB conducted a thorough review of its regulations in 2005 as part of its Regulations Modernization Project, which has resulted in the updating of some of its regulations, including Parts 9 (American Viticultural Areas) and 19 (Distilled Spirits Plants) of Title 27, Code of Federal Regulations, with additional modernization projects ongoing. The revisions of Parts 9 and 19 offer examples of some of the earliest gains from the Regulations Modernization Project. American viticultural areas (AVAs) are established through rulemaking, and Part 9 was updated to clarify TTB's position regarding the establishment of AVAs established within other AVAs and provide greater detail to the public concerning the AVA approval process, including the submission and rejection of petitions for rulemaking to establish or change AVAs. The revised Part 9 rules provide a greater understanding of the AVA process to the public and have resulted in a more efficient AVA program. The final rule for Part 9 was published in the Federal Register on January 20, 2011. For the Part 19 rulemaking, TTB revised the entirety of the Distilled Spirits Plant (DSP) regulations, which govern the production, processing, storage, and removal of all distilled spirits

[1] In response to Executive Order 13563, the IRS has added to the next annual solicitation notice a request for recommendations with respect to regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and whether they should be modified, streamlined, expanded, or repealed.

within the United States. Federal law prohibits the manufacture or production of distilled spirits in the United States other than at a registered DSP that has received a permit from TTB. The Part 19 regulations govern the production of taxable distilled spirits, from which TTB collected $4.9 billion in 2010, and denatured distilled spirits that are exempt from taxes, of which 1.7 billion wine gallons were produced in 2010. The Part 19 regulations (1) were reorganized to eliminate redundancy and to provide easier reference of applicable provisions to industry members, (2) were rewritten in plain language, (3) incorporated policies and procedures developed and established since the last revision, and (4) were generally revised to reduce the burden on industry, where feasible. The final rule for Part 19 was published in the Federal Register on February 16, 2011.

- FinCEN established a program whereby each new or significantly amended regulation is reviewed to assess clarity and effectiveness within 18 months of its effective date. FinCEN makes its regulatory assessment publicly available to the affected industries. Each assessment is targeted to the specific new regulation, or significant change to existing regulations, and a determination is made how best to evaluate its effectiveness. A particular assessment may include analysis of Bank Secrecy Act (BSA) data, review and analysis of calls to the FinCEN BSA Resource Center helpline, discussions with and feedback from the federal functional regulators and the IRS to whom FinCEN has delegated examining authority. Based on the specific findings of the assessment, FinCEN would consider whether to publish guidance or whether additional rulemaking is required. For example, in August 2009, FinCEN issued guidance (FIN-2009-G003) to help banks determine whether a customer is eligible for exemption from currency transaction reporting (CTR) requirements. The guidance resulted from questions received regarding a final rule amending the CTR exemption requirements (see 73 FR 74010) that FinCEN issued in December 2008.

- BPD, FinCEN, IRS, and TTB engage in extensive public outreach initiatives, which include meetings with industry representatives, external consultative bodies, and/or advisory committees to engage with and obtain information from the public throughout the regulatory process in a manner consistent with the Administrative Procedure Act and the Federal Advisory Committee Act (5 U.S.C. App. 2).

- On an ongoing basis, FinCEN utilizes the Unified Agenda entries to monitor pending proposed rules that are unlikely to be acted upon in the near future. In 2008, this effort resulted in the withdrawal of five proposed rules. FinCEN also regularly reviews its published guidance to ensure that it is up to date and accurate. In response to public comments in 2009, FinCEN amended its regulations regarding reports of foreign financial accounts (FBAR) in early 2011. The amendments to the FBAR reporting requirements were finalized following an NPRM issued in February 2010, which was in turn informed by feedback from a prior notice issued by Treasury (FBAR Notice 2009-62) in August 2009, in which Treasury solicited comments on a number of issues affecting a person's FBAR filing obligation.

- The Community Development Financial Institution (CDFI Fund) within DO revised the Bank Enterprise Award Program regulations in 2009 and provided multiple opportunities for public comment prior to publishing the Capital Magnet Fund regulations in 2010.

- FMS has been and is continually modernizing its regulations to respond to changes in legal and operational environments, including recent revisions to 31 CFR Parts 208, 210, and 240 in conjunction with the "all-electronic" Treasury initiative.

- BPD has revised some of its regulations to incorporate plain language and interacts with the public to receive comments on and resolve problems with its regulations, including through its customer service staff, industry gatherings, and workshops for market participants.

- Each recordkeeping, disclosure, and reporting requirement contained in a rule must be reviewed on a three year basis under the Paperwork Reduction Act (44 U.S.C. § 3501 et seq.) and certain regulations that have a significant economic impact on a substantial number of small entities must be reviewed on a ten year basis under the Regulatory Flexibility Act (5 U.S.C. § 610). These reviews are ongoing throughout the Department.

- The IRS recently issued regulations and is revising Form 1099B, Schedule D and Form 1040 to implement a 2008 change in the law that, beginning in 2011, requires brokers to report the basis of any equity security acquired after 2010 that is sold during the year. The IRS also chose to require brokers to report the date acquired, so that taxpayers would have all the information they need to report these transactions on Schedule D for 2011. Brokers may also choose to report basis for equity securities acquired before 2011 if the broker has the correct basis information. The revised Form 1099-B includes a field for the taxpayer's basis and date acquired. Additionally, the IRS is no longer requiring taxpayers to separately report gain or loss for each transaction, but rather these transactions will now be reported in the aggregate. These revisions are expected to produce a reduction of 55 million burden hours in 2011 (OMB Control Number 1545-0074).

V. Elements of Preliminary Plan/Compliance with E.O. 13563

a. Plan to develop a strong, ongoing culture of retrospective analysis.

The procedures outlined below describe the Department's plan for creating a strong, ongoing culture of retrospective analysis by implementing a process for annually soliciting recommendations for retrospective review projects from both inside and outside the Department and then assessing and prioritizing those projects for completion according to the factors described below in section V.b. The plan largely relies upon those entities most familiar with the benefits and costs associated with various regulations – the public, the regulated industries, and the regulatory and

enforcement groups at each bureau – to identify the specific portions of regulations that should be subjected to a prioritized and targeted retrospective review and revision process. In addition, the plan provides a mechanism for the regular review of entire parts of the Code of Federal Regulations to ensure that all regulations are reviewed on a regular basis.

On an annual basis, members of the public will be provided with an opportunity to suggest to each bureau the specific regulations or other guidance that should be updated or amended as part of a targeted revision. Subject to Department review and approval, the means for soliciting public input may be specifically tailored by each bureau to account for their current methods of interaction with and receiving input from the public.

Using the factors described below in a weighted analysis as described in section V.b., the regulatory review staff at each bureau will evaluate the public suggestions as well as projects recommended by various bureau personnel, and each bureau will consult with the appropriate policy official within DO about significant targeted regulatory projects that should be prioritized for completion within a specific timeframe (e.g., 1-2 years).

The appropriate DO policy officials will evaluate bureau recommendations to determine the retrospective review projects that should be prioritized for completion that year based on the factors described below. As part of the Department's evaluation process, the public may be provided with the opportunity to provide additional input on the priority regulatory review projects.

The Department will select and publicly announce on its website the priority regulatory projects and provide an explanation of the bases of those selections. To the extent practicable, the selected projects will be placed on a separate "fast track" review workflow for the priority projects identified through the above processes.

In addition, all parts of the Code of Federal Regulations within the jurisdiction of the Department should be subjected to an overarching retrospective review for modernization on a regular basis consistent with the Regulatory Flexibility Act to: (1) ensure consistency across each bureau's regulations as well the regulations of other agencies; (2) make any remaining needed statutory and technical corrections; and (3) assess the efficiency and effectiveness of the overall regulatory scheme. Given the timeframe needed to complete the revision of an entire part, and to ensure compliance with the Regulatory Flexibility Act, entire parts should be reviewed on a periodic basis following the date of the last substantial revision, and a decision would then be made regarding the extent, if any, of the revisions needed for that part. If practicable, regulations will be reviewed within five years following the date of promulgation or substantial revision, but not more than ten years from that date.

Every year, each bureau will conduct a retrospective review of ten percent of its regulations subject to this plan. This ten percent review will continue on an annual basis in order for all Treasury regulations to be reviewed at least every ten years.

To engage stakeholders, Treasury bureaus are encouraged to hold "town hall" meetings, listening sessions, roundtables or other similar events that provide in-person or real-time opportunities to share information.

To the extent that a Treasury bureau is already achieving the Executive Order 13563 policy goals and the goals of this plan through its established procedures, no duplicative coordination with DO policy offices is necessary. In such cases, bureaus will work with the appropriate DO policy office and the Office of General Counsel to make this determination. It may be necessary for a bureau to supplement its existing procedures in order to comply with this plan.

b. Prioritization: Factors and processes used in setting priorities.

The following list includes the factors to be used in setting priorities for retrospective review projects. The list of factors not only takes into account whether a regulation is significant for the purposes of E.O. 12866, but it also includes factors that directly relate to the policy considerations underlying the need for a "consistent culture of retrospective review and analysis," as described in E.O. 13563. Given the relative importance of some of these factors as compared to other factors, however, the Department may employ a weighted analysis, whereby a greater weight is given to certain factors in prioritizing regulatory review projects.

- Economic impact of the regulatory project on the public or industry using an *ex post* analysis, including increased revenues or costs, greater efficiency, decreased illegal activities, increased compliance, and number of industry members and people affected.

- Economic impact of the regulatory project on the government based on net benefits or reduction in net costs using an *ex post* analysis, including increased efficiencies and decreased costs.

- Reduced burden or intrusiveness on the public, small businesses, and industry, including greater efficiency, reducing record keeping requirements, harmonization with other agencies' regulations, and the number of industry members and/or people affected by the regulation.

- Extent and content of feedback from public outreach initiatives and external consultative bodies, including survey responses and petitions received from the public.

- Public attention related to the regulation.

- Level of complexity and prescriptive nature of the regulation.
- Opportunity to employ plain language principles.
- Time elapsed since the last review of the regulation/guidance.
- Updating outmoded or obsolete regulations or guidance.
- Potential for savings to the taxpayer.
- Potential for reduction in burden hours for recordkeeping and reporting.
- Significance of the regulation under Executive Order 12866.
- Bureau and Department resources.
- Administration and Department priorities.

c. Specific rules that are already under consideration for retrospective analysis and initial list of candidate rules for review over the next two years:

The following include significant regulatory actions and other rulemaking projects that are already under consideration for retrospective analysis and review or are expected to be reviewed during the next two years.

- IRS:
  - Proposed regulations on the 2010-11 GPL (Guidance Priority List) making corrections to the section 6402 regulations to reflect the proper place for filing claims for refund or credit. The proposed regulations are necessary because the regulations in effect are outdated and do not provide the necessary information for filing a refund claim.
  - Proposed regulations on the 2010-2011 GPL regarding lifetime income from retirement plans. Treasury and the IRS are reviewing certain regulations pertaining to retirement plans to determine whether any modifications could better achieve the objective of promoting retirement security by facilitating the offering of benefit distribution options in the form of retirement income. This initiative is expected to include projects that would facilitate the delivery of lifetime income in qualified plans and, to some extent, IRAs, and would reduce administrative burdens for retirement plan sponsors that would like to expand employees' retirement income options.
  - Proposed regulations under sections 6662, 6662A and 6664 on the 2010-2011 GPL regarding accuracy-related penalties. Section 6662 has been amended several times, and the revisions to the regulations will address issues that have

arisen as a result of the statutory amendments. In addition, section 6662A was enacted in 2004 and among other issues, the regulations will specify the dates for amended returns affecting the calculation of the accuracy-related penalty on reportable transactions.

- Final regulations on the 2010-2011 GPL that would update the regulations under section 7611 to reflect changes in the IRS organizational structure.

- Final regulations on the 2010-2011 GPL that would provide relief to employers facing financial difficulty from certain requirements under the existing regulations on safe harbor contributions to section 401(k) and (m) plans. The regulations are in response to concerns raised by employers experiencing a business hardship who are unable to meet their obligation of paying certain safe harbor contributions under their plans. The regulations would provide new flexibility to employers sponsoring certain safe harbor 401(k) plans by allowing these plan sponsors to respond to changes in their financial health by suspending required contributions.

- Final regulations on the 2010-2011 GPL that would update various existing regulations as a result of the IRS's redesign of Form 990, "Return of Organization Exempt From Income Tax." The redesign was initiated because the form had not been significantly revised since 1979 and both the IRS and stakeholders regarded the form as needing major revision to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector. The new form incorporates many recommendations made in public comments on the discussion draft of the form released in June 2007. Among other things, the regulations reduce taxpayer burden by eliminating the advance ruling process for new organizations.

- Proposed regulations on the 2010-2011 GPL that would amend the Federal Insurance Contributions Act and Federal Unemployment Tax Act regulations to extend certain exceptions to these taxes to disregarded entities. The regulations are in response to recent changes made to the entity classification regulations to ensure that the exceptions continue to be available.

- Proposed regulations on the 2010-2011 GPL regarding the dependency exemption under section 152 that incorporate the uniform definition of a qualifying child, provide or clarify other applicable rules, and make coordinating changes in the regulations under sections 2 (head of household), 63 (standard deduction), and 151 (personal exemptions), thereby complying with changes in the law made by the Working Families Tax Relief Act of 2004 and the Gulf Opportunity Zone Act of 2005.

- Final regulations under section 170 on the 2010-2011 GPL concerning the substantiation and reporting requirements for cash and noncash charitable contributions to reflect amendments made by the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006.

- Proposed regulations on the 2010-2011 GPL on the deductibility of certain investment advisory and other expenses of trusts and estates, specifically whether such expenses are subject to the 2% floor for miscellaneous itemized expenses under section 67(a) or are fully deductible under the section 67(e) exception for administration expenses that would not have been incurred if the property was not held in the trust or estate. The IRS issued proposed regulations in this area to resolve conflicts among the Federal Circuit Courts, but those regulations are now being revised to be consistent with a subsequent Supreme Court opinion.

- Proposed regulations on the 2010-2011 GPL providing guidance on the manufacturers excise tax on truck tires under section 4071 and the retail tax on highway tractors, trucks, and trailers under section 4051. The proposed regulations reflect statutory changes and revisions in light of recent court opinions.

- Final regulations on the 2010-2011 GPL under sections 381(c)(4) and (c)(5) to provide consistency in the methods of accounting used by a corporation that acquires the assets of another corporation in a section 381(a) transaction. Both regulatory sections address these issues but provide disparate treatment depending on whether the method change is subject to section 381(c)(4) or section 381(c)(5).

- Proposed regulations on the 2010-2011 GPL under section 460 regarding the long term contract method of accounting to reduce existing controversies and reduce compliance burden. The regulations will provide more specific guidance on the types of contracts eligible for the home construction contract exemption and address various issues specific to home construction contracts accounted for using the completed contract method.

- Proposed regulations under section 280A on the 2010-2011 GPL regarding the home office deduction. Proposed regulations that were published in 1980 and 1983, partially withdrawn in 1994, and never finalized are being reviewed. Treasury and the IRS are considering whether re-propose the regulations to reflect statutory amendments or to address issues that have arisen administratively.

- Proposed regulations incorporating the 1997 and 1998 amendments to section 7430 relating to awards of administrative costs and attorney fees. The proposed regulations update the existing regulations to conform to those statutory changes and provide guidance on the proper interpretation of those provisions based, in part, on review of real cases.

- BEP: Reviewing its regulations relating to the exchange of mutilated paper currency (31 CFR Part 100, subpart B). The current regulations specify the procedures that a claimant must follow in order to submit a claim for mutilated currency to the Bureau of Engraving and Printing. The regulations also describe the standards for adjudicating mutilated currency for redemption. The regulations are a good candidate

for lookback because they were promulgated in 1982 and have not been modified since 1991.

- DO:

  - Revising Treasury's Freedom of Information Act regulations as well as the Employee Rules of Conduct. In accordance with E.O. 13563, DO is also reviewing rules in title 31 in order to update references to Treasury bureaus that have been transferred to other agencies and other housekeeping and organizational changes.

  - Reviewing 31 CFR Part 25 relating to prepayment of Foreign Military Sales loans to determine whether prepayments under the rule continue to be authorized.

  - The Office of Financial Stability is finalizing an interim rule concerning conflicts of interest under the Troubled Asset Relief Program.

  - The Office of DC Pensions is streamlining its regulations at 31 CFR Part 29 by eliminating overlap with Treasury's 31 CFR Part 5 debt collection rules.

  - The Office of Foreign Assets Control has reviewed its regulations and is planning to remove Parts 500, 505, 545, 585, 586, and 587 of 31 CFR Chapter V in order to streamline its regulations and remove outdated material. These parts relate to old economic sanctions against North Korea, the Taliban, and the Former Yugoslavia that have been terminated and, in some cases, replaced by new sanctions programs.

  - Customs and Border Protection (CBP) and Treasury are finalizing a proposal regarding eliminating the mailing of paper "courtesy" notices of liquidation which provide informal, advanced notice of the liquidation date to the importers of record whose entry summaries are electronically filed in the Automated Broker Interface (ABI), while maintaining paper notices for all non-ABI filed entries. Since the ABI importer is already provided electronic courtesy notice, this effort to proceed only electronically will streamline the notification process and reduce printing and mailing costs for CBP. All importers will be able to view their liquidation reports electronically through the enhanced Automated Commercial Environment (ACE) portal.

  - CBP and Treasury has reviewed Part 24 of 19 CFR and further propose to expand the number of ways that CBP will accept the payment of duties, taxes, fees, interest and other charges by the importing public. Currently, the regulations provide that credit or charge cards, which have been authorized by the Commissioner of CBP, may be used for the payment of non-commercial entries. CBP would like to expand this for certain commercial entries and also for the non-entry related fees, such as but not limited to, transponders, decals, broker examination, intellectual property and quarterly harbor maintenance fees. Under

the proposal, CBP will also set the maximum amounts for charge or credit card transactions on commercial entries so that it aligns with section 920(b)(3) of the Consumer Financial Protection Act of 2010. The proposal would assist CBP in improving customer service and financial management and facilitate the overall entry process.

- FinCEN:

  - Identified regulations in need of amendment to adapt to evolving industry practice, such as redefining the money services business definitions; received comments in response to its 31 CFR Chapter X proposal to identify unclear or inconsistent rules; currently reviewing and updating all FAQs relating to currency transaction reporting. 31 CFR Chapter X refers to the transfer and reorganization of the Bank Secrecy Act regulations that appeared at 31 CFR Part 103 to a new chapter, 31 CFR Chapter X.

  - Finalization of several interim rules (pending the availability of resources). Initially, FinCEN intends to finalize its anti-money laundering (AML) program rules for mutual funds and AML program regulations for dealers in precious metals, stones and jewels. There were a number of rules issued in 2002 following the USA PATRIOT Act that were issued as interim final rules for expediency sake. The AML rule for mutual funds is one such rule. Since their issuance, FinCEN has not had sufficient time to devote to a review of these interim final rules. With respect to the AML program rule for dealers in precious metals, stones and jewels, finalization would provide FinCEN an opportunity to incorporate an administrative ruling issued shortly after the interim final rule was published.

- FMS:

  - With an anticipated savings of approximately $120 million each year by eliminating paper checks, effective May 1, 2011, all individuals who apply for federal benefits will receive their payments electronically – by direct deposit to a bank or credit union account or to a Direct Express® Debit MasterCard® card account. Those who already receive paper checks will need to switch to electronic payment by March 1, 2013. This new rule revises 31 CFR Part 208.

  - Currently revising 31 CFR Part 223, which addresses surety companies doing business with the U.S. The update will strengthen the procedures and standards governing the adjudication by FMS of any agency complaint requesting that a surety's certificate be revoked for nonperformance.

  - Reviewing 31 CFR Parts 202 and 203 as part of its Cash Collection and Management Modernization initiative. Part 202 addresses depositaries and financial agents of the federal government and Part 203 concerns payments of federal taxes and the Treasury tax and loan (TT&L) program. The revisions will

modernize the regulations to reflect changes in the use of TT&L banks and the use of new investment mechanisms.

- Revising and finalizing 31 CFR Part 240 to allow for the use of direct debit for payment reclamations, as part of the All-Electronic Treasury initiative. The move to an electronic process is intended to yield processing efficiencies.

- Reviewing 31 CFR Part 210, which periodically is influenced by the NACHA Operating Rules and Guidelines, to ensure that the regulations governing the Federal government's participation in the ACH network remains consistent with technological innovations and allows the government to realize any associated cost savings.

- Updating 31 CFR Part 245, which governs the issuance of replacement and settlement payments on lost, stolen, damaged, defaced, or forged checks, to implement provision in the Debt Collection Improvement Act and the Check Forgery Insurance Fund.

- Mint: Reviewing its mutilated coin redemption program regulations (31 CFR Part 100, subpart C). This review will permit the bureau to clarify certain ambiguities in the regulations, prepare necessary updates to reflect redemption values for new coins issued since the regulation was last amended (such as the Sacagawea Golden Dollar, Presidential and Native American $1 Coins), and reevaluate existing redemption processes.

- TTB (all references to parts in TTB projects are to Title 27 of the Code of Federal Regulations):

  - <u>Revision to Specially Denatured and Completely Denatured Alcohol Regulations</u>: TTB plans to propose changes to regulations for specially denatured alcohol (SDA) and completely denatured alcohol (CDA) that would result in cost savings for both TTB and regulated industry members. Under the authority of the Internal Revenue Code of 1986, TTB regulates denatured alcohol that is unfit for beverage use, and which may be removed from a regulated distilled spirits plant without payment of tax. SDA and CDA are widely used in the American fuel, medical, and manufacturing sectors. The industrial alcohol industry far exceeds the beverage alcohol industry in size and scope, and it is a rapidly growing industry in the United States. Some concerns have been raised that the current regulations may create significant roadblocks for industry members in getting products to the marketplace quickly and efficiently. TTB is proposing to reclassify certain SDA formulas as CDA and to issue new general-use formulas for articles made with SDA so that industry members would less frequently need to seek formula approval from TTB and in turn decrease the dedication of TTB resources to formula review. TTB estimates that these proposed changes would result in an 80 percent reduction in the formula approval submissions currently required from industry members and would reduce total annual paperwork burden hours on

affected industry members from 2,415 to 517 hours. The reduction in formula submissions will enable TTB to redirect its resources to address backlogs that exist in other areas of TTB's mission activities, such as analyses of compliance samples for industrial/fuel alcohol to protect the revenue and working with industry to test and approve new and more environmentally friendly denaturants. Other proposed changes would remove unnecessary regulatory burdens and update the regulations to align them with current industry practice. These changes will decrease the regulatory burdens on industry members and reduce costs to TTB.

- Serving Facts: The Federal Alcohol Administration Act and the Internal Revenue Code authorize regulations for the labeling of wine, distilled spirits, and malt beverages, which should, among other things, ensure that labels provide the consumer with adequate information as to the identity and quality of the product. In July 2007, in response to a petition for rulemaking from a consumer advocacy group and comments received in response to an advance notice of proposed rulemaking, TTB published a proposed rule concerning the inclusion of a statement of calories, carbohydrates, fat, and protein per serving in a Serving Facts panel on wine, beer, and distilled spirits labels. The proposed rule also invited public comments on the extension of alcohol content labeling requirements to all alcohol beverages, which currently apply only to some alcohol beverages. TTB is continuing to evaluate the cost burden to industry and benefits to consumers.

- CHIPRA Final Rule: The rulemaking will finalize the temporary rule to amend regulations promulgated under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), which included provisions to help prevent the diversion of tobacco products and to collect the tobacco excise taxes rightfully due. Congress mandated the regulation of processed tobacco to strengthen the enforcement authority for the Federal excise tax on tobacco products, which significantly increased under the Act. The Act provides enforcement mechanisms to assist in preventing the diversion of tobacco materials to illegal manufacturers, and the regulations implement these enforcement mechanisms. A three year temporary rule was published in June of 2009; to continue the implementation of these CHIPRA provisions, a final rule must be published by June 2012 consistent with 26 U.S.C. 7805 regarding the expiration of temporary rules.

- Revisions to the Labeling Requirements (Parts 4 (Wine), 5 (Distilled Spirits), and 7 (Malt Beverages)): The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate or foreign commerce have a label issued and approved under regulations prescribed by the Secretary of the Treasury. In connection with E.O. 13563, TTB has near-term plans to revise the regulations concerning the approval of labels for distilled spirits, wine, and malt beverages to reduce the cost to TTB of reviewing and approving an ever-increasing number of applications for label approval (well over 130,000 per year).

Currently, the review and approval process requires a staff of at least 13 people for the pre-approval of labels in addition to management review. These regulatory changes, to be developed with industry input, also have the intent of accelerating the approval process, which will result in the regulated industries being able to bring products to market without undue delay.

- Selected Revisions of Export Regulations (Part 28): TTB has identified sections of the regulations that should be amended to reduce the regulatory burden on industry members trying to comply with outdated regulations. Current regulations require industry members to obtain documents and follow procedures that are outdated and not entirely consistent with current industry practices regarding exportation and, under its regulatory authority, TTB routinely provides exceptions to these regulatory provisions. Revising these regulations will provide industry members with clear and up to date procedures for removal of alcohol for exportation without having to pay excise taxes (under the Internal Revenue Code, beverage alcohol may be removed from the premises of a distilled spirits plant for exportation without payment of tax), thus increasing their willingness and ability to export their products. Increasing American exports benefits the American economy and is consistent with Treasury and Administration priorities.

- Revisions to the Alcohol Fuel Plant Regulations: TTB's alcohol fuel plant regulations need to be revised to reflect the current state of the alcohol fuel industry. Alcohol produced at a TTB-approved alcohol fuel plant may be removed from the plant without payment of tax if properly denatured and used only for fuel. The alcohol fuel plant regulations were initially drafted to promote growth in the industry, primarily focused on the development of smaller capacity plants, and to provide minimal permitting, recordkeeping, reporting, and bonding requirements. In the United States, there are currently over 1,400 permitted ethanol fuel plants that produced over 9 billion gallons of ethanol for fuel use in 2010. Less than 200 of the largest fuel ethanol plants produce 8 billion gallons of fuel ethanol. The significant growth of the industry, especially the largest capacity plants, since the previous issuance of the applicable regulations has resulted in potential risks to the revenue not currently addressed in the regulations. If just one percent of this alcohol was diverted for beverage use, the tax loss would approximate $2.4 billion. Current reporting requirements for certain plants are not sufficient to provide adequate information to TTB to monitor industry compliance and to identify removals of alcohol that should be subject to tax. For example, alcohol removed for beverage purposes or without proper denaturation may go unnoticed. TTB is also considering other changes, such as the addition of provisions regarding the disposition of by-products of the production process, which would update the regulations to reflect current industry practice.

- Revision of the Part 17 Regulations to Allow Self-Certification of Nonbeverage Product Formulas: TTB is considering revisions to regulations governing nonbeverage products made with taxpaid alcohol. These nonbeverage products

include foods, medicines, and flavors. The revisions would practically eliminate the need for TTB to formally approve nonbeverage product formulas. The changes would result in significant cost savings for an important industry which currently must obtain formula approval from TTB, and some savings for TTB, which must review and take action to approve or disapprove each formula. Estimating the specific savings to TTB is premature as this rulemaking project is in the early stages of internal deliberation.

- Revisions to the Beer Regulations (Part 25): Brewery regulations need to be revised to reduce the regulatory burden on the beer industry and streamline regulatory requirements. Under the authority of the Internal Revenue Code, TTB regulates activities at breweries. The regulations in Part 25 address the qualification of breweries, bonds and taxation, removals without payment of tax, and records and reporting. In an advance notice of proposed rulemaking, TTB plans to solicit comments regarding potential ways to decrease the regulatory burden on industry members (including but not limited to streamlining and/or reducing the reporting and recordkeeping requirements for the industry) and increase efficiency for both the industry and TTB.

- Revisions to Distilled Spirits Plant Reporting Requirements: TTB will propose to revise regulations in Part 19 and replace the current four report forms used by distilled spirits plants to report their operations on a monthly basis with two new report forms that would be submitted on a monthly basis (plants that qualify to file taxes on a quarterly basis would submit the new reports on a quarterly basis). This project, which was included in the President's FY 2012 budget for TTB as a cost saving item, will address numerous concerns and desires for improved reporting by the affected distilled spirits industry and result in cost savings to the industry and TTB by significantly reducing the number of monthly plant operations reports that must be completed and filed by industry members and processed by TTB. TTB preliminarily estimates that this project will result in an annual savings of approximately 23,218 paperwork burden hours (or 11.6 staff years) for industry members and 629 processing hours (or 0.3 staff years) and $12,442 per year for TTB in contractor time. In addition, TTB estimates that this project will result in additional savings in staff time (approximately 3 staff years) equaling $300,000 annually based on the more efficient and effective processing of reports and the use of report data to reconcile industry member tax accounts.

- BPD: Finalization of an interim rule relating to the regulations governing book-entry Treasury securities held in the commercial book-entry system (the "TRADES regulations") (Part 357, Subpart B) so that they conform to certain provisions in Revised Article 9 of the Uniform Commercial Code (U.C.C.) – Secured Transactions. In 1996, Treasury issued the Treasury/Reserve Automated Debt-Entry System (TRADES) rules. The TRADES rules generally are based on the 1994 U.C.C. Article 8 – Investment Securities (Revised Article 8). The rules specify which jurisdiction's law governs certain matters related to Treasury securities held in TRADES or the commercial book-entry system. U.C.C. Revised Article 9 – Secured Transactions

substantially revised the law on secured transactions. Revised Article 9 (with conforming amendments) amends certain provisions of Revised Article 8 (with conforming amendments). All 50 states and the District of Columbia adopted it. The Uniform Commercial Code § 1-201(38) defines "state" as a state of the United States, the District of Columbia, Puerto Rico, the US Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States. Prior to the Interim rule, § 357.11(b) was closely based on the choice of law rules in U.C.C. § 8-110, which was amended by Revised Article 9. (§ 9-305(a)(3) and § 8-110(e)(1)) These provisions provide that an agreement between a securities intermediary and its entitlement holder may expressly specify a jurisdiction for purposes of Revised Article 8. The Interim TRADES rule, 31 CFR § 357.11(b)(1) conforms to this provision. The change allows Treasury securities transactions to continue to be subject to the same rules that are applicable to other securities. The Interim TRADES rule also clarifies that the debtor location rule in Revised Article 9 may be applied in 31 CFR § 357.11(c). If a state has enacted either the U.C.C. Revised Article 8 (with Conforming and Miscellaneous Amendments) 1994 Official Text, or the current version of Article 8, (as amended by 1999 Revised Article 9) then federal law as prescribed in 31 CFR §§ 357.10(c) and 357.11(e) does not apply. Once all the states, territories, and possessions adopt Revised Article 9, and are no longer subject to Article 8 preemption, the sections will be deleted. Part 357 of title 31, Appendix B will be updated to account for the changes.

d. Treasury official responsible for retrospective review.

George W. Madison, General Counsel
202-622-2000

e. Plan to ensure that the Department's retrospective review team and process maintains sufficient independence from the offices responsible for writing and implementing regulations.

Although the input for the retrospective review process will derive from and be reviewed by multiple sources, including the specific regulatory groups responsible for writing and implementing the regulations, the final determination about priority projects will include input from personnel outside of the regulatory and enforcement groups, including senior managers and policy officials. In addition, individuals at the Department Offices, who are separate from and oversee the regulatory and enforcement groups at each bureau and make policy decisions on a Department-wide basis, will be consulted for prioritization.

f. Treasury's actions to strengthen internal review expertise.

When appropriate, the Department will seek assistance from the Office of the Assistant Secretary for Economic Policy in analyzing the economic costs and benefits of its regulations. In addition, the Office of General Counsel, General Law, Ethics, and Regulation, will provide periodic training.

g. Plan for retrospective analysis over the next two years, and beyond.

The plan outlined above in response to sections V.a. and V.b. is intended to be conducted on an ongoing basis as part of a Department-wide annual regulatory review plan. Thus, the retrospective review of the Department's regulations will be a continuing process that will take into account the various factors outlined above.

h. What actions will be taken in relation to the analyses?

See section V.a.

i. Plans for revising rules.

As described in section V.a., entire parts of the Code of Federal Regulations will be reviewed at a minimum of every five to ten years to ensure that each regulation is revisited on a regular basis, with the advance publication to solicit public comments on potential revisions, although smaller regulatory provisions and agency guidance may be reviewed and revised more often through the annual retrospective review project prioritization process described above.

j. Coordination with other federal agencies that have jurisdiction or similar interests.

Through the retrospective review plan described above in section V.a., other federal agencies may nominate regulatory projects as part of the annual retrospective review project prioritization process. In addition, the bureau and DO officials responsible for implementing and coordinating the retrospective review process will be designated as contact people for the purpose of coordinating regulatory projects with other agencies, to the extent necessary.

k. Plans for peer review.

The preliminary plan has been reviewed by OMB's Office of Information and Regulatory Affairs and is now being published in the Federal Register and on Treasury's website. The Department will take into account any public feedback and comments on the plan prior to its finalization and implementation.

VI. Components of Retrospective Cost-Benefit Analysis

a. Metrics used to evaluate regulations after they have been implemented.

The Department will evaluate the effectiveness of the regulations reviewed through the retrospective review process using both quantitative and qualitative methods.

Quantitatively, in evaluating the effectiveness of a regulation identified for retrospective review, each bureau will determine the regulation's net cost to the bureau and/or the public and the net benefit to be derived from the proposed revision or elimination of the regulation. This information will be solicited from the public during the retrospective review project nomination/prioritization process and, to the extent available, it will be provided to the public from the bureau during the review and rulemaking process. In determining the net benefits/cost of a regulation, the bureau will consider its monetary benefits/costs as well as any burden or efficiency-related benefits/costs that may not have a direct monetary value. In addition, for significant regulations, the bureau will perform another quantitative analysis to assess the effectiveness of the regulation 18-24 months following the implementation of the revised regulation. Quantitative methods should be used only if determined necessary during the retrospective review process and to the extent that the bureau has adequate resources and expertise to perform a quantitative analysis.

Qualitatively, the bureaus will solicit feedback from the public relating to the effectiveness, burden, and equity of its regulations through various public outreach initiatives, including online fora, meetings with affected entities and individuals, advisory councils, and public events. This information will be taken into account in prioritizing retrospective review projects as well as in evaluating the effectiveness of regulatory revisions resulting from the retrospective review process.

b. Steps taken to ensure that Treasury has the data available with which to conduct a robust retrospective analysis.

For many regulatory programs, ongoing monitoring provides data to support retrospective analysis. For some programs, while dependent on available resources, the Department will take appropriate steps to obtain reliable data on a case-by-case basis.

c. Experimental designs.

The Department will work with the Office of Information and Regulatory Affairs to develop and incorporate experimental designs into retrospective analysis, when appropriate.

VII. Publishing the Agency's Plan Online

a. Publication of the Department's retrospective review plan

The Department's plan and available data will be available on its Open Government website (www.treasury.gov/open). Contact the Office of Privacy, Transparency, and Records, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220; (202) 622-2000; open@treasury.gov for more information.

APPENDIX
Summary of Public Comments Received in Response to the
March 29, 2011 Federal Register Notice

- One commenter recommended that Treasury focus review efforts on minimizing burdens on small businesses. Citing a recent regulatory change in federal tax deposit coupons, the commenter advised the Department that changes in information technology may produce new burdens for small businesses. In addition, the commenter encouraged the provision of additional information about new regulatory changes. This commenter also encouraged the Department to utilize the Small Business Administration's Office of Advocacy guidance on the Regulatory Flexibility Act and to increase outreach to small businesses.

- Another commenter encouraged retrospective review of revenue rulings. According to the commenter, because revenue rulings influence taxpayer behavior and are often granted deference by federal courts, revenue rulings should fall within the scope of Treasury's request for comments and retrospective review procedures. In particular, the commenter raised concerns about Revenue Rulings 2009-13 and 2009-14.

- Commenters provided input on which factors the Department should use in reviewing retrospectively its regulations. Recommended factors included reducing burden generally, reducing burdens on small businesses, balancing burdens and benefits, reviewing detailed and prescriptive regulations, and ensuring rules are consistent with statute and sound public policy. One commenter suggested that if a rule requires extensive guidance, the program should be reexamined.

- Two commenters suggested that a way to eliminate overlapping requirements is to examine jointly issued rules in order to consolidate reporting and other requirements.

- Commenters provided input on Treasury regulations that are working well and could serve as a model. One commenter identified the process used by the IRS to implement the Health Coverage Tax Credit program as a good model for collaboration between the Treasury Department and the private sector to accomplish a regulatory initiative. Two commenters suggested that the Employee Plans Compliance Resolution System is working well and should also be greatly expanded to permit self correction in a much broader range of circumstances. Another commenter suggested the Department should consider issuing EPCRS-like rules for welfare plans.

- Commenters recommended that specific rules be prioritized for retrospective review. Below is a sampling of the suggestions for retrospective review.

  - Rules governing "retroactive annuity starting dates."

- Rules that affect workplace wellness programs.
- Two commenters suggested a comprehensive review of the employee benefits guidance in order to simplify and minimize compliance costs.
- Finalize the rules with respect to the establishment of Internal Revenue Code § 125 cafeteria plans by group health plan sponsors and the requirements for valuing COBRA continuation coverage costs.
- Review and modernize the existing nondiscrimination rules for self-insured arrangements under Internal Revenue Code § 105(h),
- Issue a request for information related to the August 2007 proposed regulations on cafeteria plans in order to provide additional opportunity for public comment before they are published in final form.
- Mid-year changes to a safe harbor 401(k) plan be permitted (and updated notices provided), to the extent that the changes would not be expected to significantly impact a participant's deferral decision.
- One commenter recommended that all elections that affect the funding for a plan year be formalized in an attachment to the Schedule SB for the year and that elections regarding credit balances be permitted in all instances to specify a determinable formula in lieu of stating a specific dollar amount.
- Review the June 2010 interim final rule implementing the grandfathered plan status provision of the Patient Protection and Affordable Care Act.
- Review all notice requirements for plan sponsors and participants under its jurisdiction and determine where such notices can be modified or streamlined.
- One commenter recommended "an immediate moratorium" on the assessment and collection of the Internal Revenue Code § 6707A penalty pending retrospective review.
- Revise the regulations under Internal Revenue Code § 409A to address practical concerns, particularly with respect to benefits payable upon death, disability, or an involuntary separation from service.
- Review and modify the regulations under Internal Revenue Code § 416 to eliminate unnecessary complexities and burdens.
- Update the life-nonlife consolidated return rules in § 1.1502-47 to eliminate additional unnecessary complexity.
- Revise the correction procedures applicable to inadvertent failures under Internal Revenue Code § 817(h) in order to be consistent with recently enacted legislation.
- The reporting requirements for controlled foreign corporations of U.S. life insurance companies are in need of modification as the burden imposed on them is not commensurate with the IRS's compliance objective. The rules are outdated and should be made consistent with the Foreign Account Tax Compliance Act.
- Regulations for Dual Consolidated Losses, Internal Revenue Code § 1503(d), should be removed.
- Proposed regulations for Internal Revenue Code § 987 should be modified.

- Three commenters suggested that the Department, working with other federal agency partners should work to incorporate information technology in order to streamline the requirements for the disclosure of information to group health plan enrollees and to permit the appropriate use of electronic media for such disclosures.

- One commenter suggested that the Department should expand access to and opportunities for public input on the IRS Priority Guidance Plan. Further, the commenter suggested that the Department should broaden its dissemination of the guidance document to a wider audience and encourage feed back through stakeholder and taxpayer meetings and outreach.

- In order to improve public outreach, two commenters suggested that the Department should expand use of the notice and comment process as outlined in the Administrative Procedure Act (APA) to provide opportunity for public input prior to releasing a final rule. Two commenters recommended that the Department incorporate in the final rule sufficient lead time for affected entities to come into compliance with the regulatory mandates.