

## I. Background

In 1985, the Commission adopted Rule 4.5, which provides an exclusion from the definition of "CPO" for certain otherwise regulated persons that operated certain qualifying entities.<sup>1</sup> At the time of its adoption, any person seeking to claim the exclusion was required to file with the Commission a notice of eligibility that contained a representation that

\* \* \* such person will operate the qualifying entity specified therein in a manner such that the qualifying entity: (i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1) [subject to certain provisions] \* \* \* (ii) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 5 percent of the fair market value of the entity's assets, after taking into account unrealized profits and unrealized losses on any such contracts \* \* \* and (iii) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets.<sup>2</sup>

In 2003, the Commission amended Rule 4.5 by deleting the bona fide hedging requirement, the limitation on aggregate initial margin, and the prohibition on marketing.<sup>3</sup> In proposing these amendments to Rule 4.5, the Commission explained that its decision to delete the hedging requirement and the limitation on aggregate initial margin was driven by the fact that persons and qualifying entities that are otherwise regulated "may not need to be subject to any commodity interest trading criteria to qualify for the exclusion afforded by Rule 4.5."<sup>4</sup> The Commission further explained when adopting the final amendments that its decision to delete the prohibition on marketing was driven by comments claiming that "the 'otherwise regulated' nature of the qualifying entities \* \* \* would provide adequate customer protection, and, further, that compliance with the subjective nature of the marketing restriction could give rise to the possibility of unequal enforcement where commodity interest trading was restricted."<sup>5</sup>

Rule 4.5 currently requires only that notices of eligibility include representations that

\* \* \* the qualifying entity: (i) Will disclose in writing to each participant, whether existing or prospective, that the

qualifying entity is operated by a person who has claimed an exclusion from the definition of the term 'commodity pool operator' under the [Commodity Exchange] Act, and therefore, who is not subject to registration or regulation as a pool operator under the [Commodity Exchange] Act \* \* \* and (ii) Will submit to special calls as the Commission may require.<sup>6</sup>

## II. NFA's Petition

By letter dated August 18, 2010 ("Petition"), NFA, a registered futures association, petitioned the Commission under Rule 13.2<sup>7</sup> to amend Rule 4.5. Specifically, NFA requested that, in addition to the two current representations required in a person's notice of eligibility, Rule 4.5 should require the following representation:

(iii) Furthermore, if the person claiming the exclusion is an investment company registered as such under the Investment Company Act of 1940, then the notice of eligibility must also contain representations that such person will operate the qualifying entity as described in [Rule] 4.5(b)(1) in a manner such that the qualifying entity: (a) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); *Provided however*, That in addition, with respect to positions in commodity futures or commodity option contracts that may be held by a qualifying entity only which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, *Provided further*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such [five] percent; (b) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets.

## III. Request for Comments

The Commission requests public comment on any aspect of the Petition that commenters believe may raise issues under the Commodity Exchange Act or Commission regulations.

\* \* \* \* \*

Issued in Washington, DC, on September 13, 2010 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010-23310 Filed 9-16-10; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2010-0046]

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Consumer Focus Groups

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing that a proposed collection of information has been submitted to the Office of Management and Budget ("OMB") for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by October 18, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202-395-6974, or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 3041-0136 and identified by Docket No. CPSC-2010-0046. In addition, written comments also should be submitted in <http://www.regulations.gov> under Docket No. CPSC-2010-0046, or by mail/hand delivery/courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

**FOR FURTHER INFORMATION CONTACT:** Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7671, [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance:

<sup>1</sup> 50 FR 15868-01 (April 23, 1985).

<sup>2</sup> *Id.* at 15883.

<sup>3</sup> 68 FR 47221-01, 47223 (Aug. 8, 2003).

<sup>4</sup> 68 FR 12622-02, 12626 (March 17, 2003).

<sup>5</sup> 68 FR 47223.

<sup>6</sup> 17 CFR 4.5(c)(2).

<sup>7</sup> 17 CFR 13.2 (enumerating the process by which the Commission may be petitioned for the issuance, amendment or repeal of a rule).

Consumer Focus Groups—(OMB Control Number 3041–0136—Extension).

The Commission is authorized, under section 5(a) of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. 2054(a), to collect information, conduct research, and perform studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

To better identify and evaluate the risks of product-related incidents, the Commission staff invites and obtains direct feedback from consumers on issues related to product safety such as recall effectiveness, product use, and perceptions regarding safety issues. Through participation in certain focus groups, consumers answer questions and provide information regarding their actual experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product, including recalled products. The information collected from the Consumer Focus Groups will help inform the Commission’s evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information also may assist the Commission’s efforts to support voluntary standards activities and help identify areas regarding consumer safety issues that need additional research. In addition, the information will assist with forming new ways of providing user friendly data to consumers through CPSC’s Web site and information and education campaigns.

If this information is not collected, the Commission may not have available certain useful information regarding consumer experiences, opinions, and perceptions related to specific product use in its ongoing efforts to improve the safety of consumer products and safety information on behalf of consumers. Currently, the Commission staff relies on its expert judgment about consumer behavior, perceptions, and similar information related to consumer products and product use. Not conducting the information collection activity, therefore, could reduce the quality of assessments currently completed by Commission staff. The information collection activity would likely provide the Commission staff with information that would focus the

staff’s assessments, or could provide insight into consumer perceptions and usage patterns that could not be anticipated by Commission staff.

In the **Federal Register** of June 7, 2010 (75 FR 32161), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows. We anticipate that, over the three year period of this request, we will conduct 40 focus groups and 20 one-on-one interviews for a variety of projects. The total hours of burden to the respondents are: (4 hours per person × 400 participants) + (30 minutes per person × 20 participants) = 1,610 hours (537 hours budgeted per year for three years). The total annual cost is: 1,610 × \$29.40 (U.S. Department of Labor, Employer costs for Employee Compensation, September 2009) = \$47,334 (\$15,778 budgeted per year for three years).

The estimated annual cost of the information collection requirements to the Federal government is approximately \$140,000 per year for three years. Salary and benefits costs for government personnel assigned to this study are estimated at \$127,573 based on 9 months of staff time at an average level of GS–14 step 5 (((\$119,238 ÷ .701) ÷ 12 months) × 21 months), using a 70.1 percent ratio of wages and salary to total compensation from Table 1 of the December 2009 Employer Costs for Employee Compensation, published by the Bureau of Labor Statistics. This sum also includes travel costs expended for meeting with contractors (\$40,000, estimated at \$1,000 per focus group), and contracts for conducting focus groups and/or one-on-one interviews (\$250,000, estimated at \$5,000 per focus group and \$2,500 per one-on-one interview).

Dated: September 14, 2010.

**Todd A. Stevenson,**  
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010–23280 Filed 9–16–10; 8:45 am]

**BILLING CODE 6355–01–P**

## **DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

### **Senior Executive Service Performance Review Board**

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice.

**SUMMARY:** This notice announces the membership of the Defense Nuclear

Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

**DATES:** *Effective Date:* September 17, 2010.

**ADDRESS:** Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

**FOR FURTHER INFORMATION CONTACT:** Deborah Bisciegia by telephone at (202) 694–7041 or by e-mail at [debbieb@dnfsb.gov](mailto:debbieb@dnfsb.gov).

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 4314 (c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of the senior executive’s performance, the executive’s response, and the higher level official’s comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board: Christopher E. Aiello, Director of Human Resources, Federal Deposit Insurance Corporation  
David M. Capozzi, Director of Technical and Information Services, United States Access Board  
DeDe Greene, Executive Officer, Civil Rights Division, Department of Justice  
Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigation Board

Dated: September 10, 2010.

**Brian Grosner,**  
*Chairman, Executive Resources Board.*

[FR Doc. 2010–23180 Filed 9–16–10; 8:45 am]

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## **DEPARTMENT OF DEFENSE**

### **Department of the Navy**

#### **Meeting of the Independent Panel To Review the Judge Advocate Requirements of the Department of the Navy**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of Open Meetings.

**SUMMARY:** The Independent Panel to Review the Judge Advocate