

The PBGC expects most plan administrators to provide the Participant Notice in compliance with this regulation. Any plan administrator who does not comply with this regulation may be assessed penalties under section 4071 of ERISA. If a plan administrator issues a Participant Notice for the 1995 plan year that meets the requirements of the proposed rule, the PBGC will not assess section 4071 penalties based on a failure to comply with any different requirements in the final rule.

E.O. 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because the rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Small plans are exempt from the Participant Notice requirement for the 1995 plan year. For subsequent plan years, neither the cost of determining whether a plan is subject to the Participant Notice requirement nor the cost of preparing and issuing the Participant Notice is expected to be significant for a substantial number of small entities. The regulation contains special rules designed to simplify the Participant Notice requirement for small plans.

The Paperwork Reduction Act of 1995, which generally becomes effective on October 1, 1995, will apply to the disclosure requirements in this final rule. The PBGC intends in the near future to submit to the Office of Management and Budget a request for approval of these disclosure

requirements and to publish in the **Federal Register** a notice advising the public of its request.

List of Subjects in 29 CFR Part 2627

Employee benefit plans, Pension Insurance, Pensions.

For the reasons set forth above, the PBGC is amending subchapter C, chapter XXVI of 29 CFR by adding a new part 2627 to read as follows:

Part 2627—DISCLOSURE TO PARTICIPANTS

Sec.

- 2627.1 Purpose and scope.
- 2627.2 Definitions.
- 2627.3 Notice requirement.
- 2627.4 Small plan rules.
- 2627.5 Exemption for new and newly-covered plans.
- 2627.6 Mergers, consolidations, and spinoffs.
- 2627.7 Persons entitled to notice.
- 2627.8 Time of notice.
- 2627.9 Manner of issuance of notice.
- 2627.10 Form of notice.

Appendix A to part 2627—Model participant notice.

Appendix B to part 2627—Table of maximum guaranteed benefits.

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 2627.1 Purpose and scope.

(a) *Purpose.* This part prescribes rules and procedures for complying with the requirements of section 4011 of the Act.

(b) *Scope.* This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of the Act.

§ 2627.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Participant has the meaning in § 2617.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of the Act and this part.

Plan administrator means the administrator, as defined in section 4001(a)(1) of the Act.

§ 2627.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if—

(1) A variable rate premium is payable for the plan under section 4006(a)(3)(E) of the Act and part 2610 of this chapter for that plan year; and

(2) The plan does not meet the Deficit Reduction Contribution ("DRC") Exception Test in paragraph (b) of this section (which may be applied using the

Small Plan DRC Exception Test rules in § 2627.4(b), where applicable) for that plan year or for the prior plan year.

(b) *DRC Exception Test—(1) Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of the Act for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of the Act.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of the Act of up to \$1,000 a day for each day that the failure continues.

§ 2627.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of the Act for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of the Act for a pre-1995 plan year by reason