

\$1,000 for each day for which a failure to submit required information continues. The PBGC has the right to pursue other equitable or legal remedies available to it under the law.

#### Effective Date

The regulation applies for Information Years ending on or after December 31, 1995.

#### Paperwork Reduction Act

The PBGC has submitted the collection of information requirements in this proposed regulation to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. chapter 35). The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. The PBGC estimates the public reporting burden for this collection of information to average 215.3 hours for each of approximately 100 controlled groups.

Comments concerning this collection of information should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: PBGC Desk Officer.

#### E.O. 12866 and Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The provisions of this proposed regulation would implement policy decisions made by Congress in requiring Filers to provide audited financial statements and other required information annually to the PBGC. Those provisions reflect the PBGC's interpretation of the statutory standards and prescribe the form, time, and manner in which the required information should be submitted.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that, if adopted, this proposed regulation would not have a significant economic impact on a substantial number of small entities. The tests for identifying Filers under section 4010(b) of ERISA limit the filing requirements to large companies and their controlled groups. With respect to many of those groups, the PBGC will obtain audited financial statements from public sources

(such as the Securities and Exchange Commission), rather than require each of the companies to file the information with the PBGC. Further, the proposed regulation will exempt plans with fewer than 500 participants from the actuarial information requirements. The regulation would not require individual financial information with respect to many of the companies within controlled groups. In addition, the PBGC intends to develop the means to allow Filers to submit required information electronically. 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.

#### List of Subjects in 29 CFR Part 2628

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend subchapter C, chapter XXVI of 29 CFR by adding a new part 2628 to read as follows:

#### PART 2628—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

- 2628.1 Purpose and scope.
- 2628.2 Definitions.
- 2628.3 Required submission of information.
- 2628.4 Filers.
- 2628.5 Exemptions.
- 2628.6 Information Year.
- 2628.7 Required information.
- 2628.8 Due date and filing with the PBGC.
- 2628.9 Date of filing.
- 2628.10 Confidentiality of information submitted.

**Authority:** 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310

##### § 2628.1 Purpose and scope.

(a) *Purpose.* This part prescribes the procedures and the information that Filers (as described in § 2628.4(a) of this part) must submit annually to the PBGC under section 4010 of the Act.

(b) *Scope.* This part applies to Filers for any Information Year ending on or after December 31, 1995.

##### § 2628.2 Definitions.

For purposes of this part—

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

*Code* means the Internal Revenue Code of 1986, as amended.

*Contributing sponsor* means a person who is a contributing sponsor as defined in section 4001(a)(13) of the Act.

*Controlled group* means, in connection with any person, a group consisting of that person and all other persons under common control with

such person, determined under part 2612 of this chapter.

*Information Year* means the year determined under § 2628.6 of this part.

*Exempt Plan* means a plan as described in § 2628.5(a) of this part.

*Filer* means a person who is a Filer as described in § 2628.4 of this part.

*Fiscal year* means, with respect to a person, the annual accounting period or, if the person has not adopted a closing date, a calendar year (*i.e.*, the year ending on December 31).

*Person* means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization representing any group of participants for purposes of collective bargaining.

*Plan* means a single-employer plan (as defined in section 4001(a)(15) of the Act) that is covered by section 4021(a) and not excluded under section 4021(b) of the Act.

*Plan year* means the calendar, policy, or fiscal year on which the records of a Plan are kept.

*Unfunded vested benefits* means the amount determined under section 4006(a)(3)(E)(iii) of the Act and § 2610.23 of this chapter (without reference to § 2610.24 of this chapter).

*Value of benefit liabilities* means the value of a Plan's benefit liabilities (as defined in section 4001(a)(16) of the Act), as of the end of the plan year ending within the Filer's Information Year, using:

(1) The PBGC's valuation assumptions for trusted plans terminating as of the end of that plan year, as prescribed in 29 CFR part 2619, subpart C, and

(2) Plan census data as of the end of that plan year or the beginning of the next plan year.

If such census data are not available, a projection of plan census data from a date within the plan year must be used. The projection must be consistent with projections used to measure pension obligations of the Plan for financial statement purposes and must give a result appropriate to the measurement date for these obligations. Thus, for example, adjustments to the projection process may be required where there has been a significant event (e.g., a plan amendment or a curtailment) which has not been reflected in the projection assumptions.

##### § 2628.3 Required submission of information.

(a) *General requirement.* Except as provided in § 2628.5, each person who is a Filer as described in § 2628.4(a) shall submit to the PBGC annually on or