

governments, businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the President's priorities. The Department believes this notice is "significant" under category (4), *supra*, and subject to OMB review on that basis.

Paperwork Reduction Act

The proposed regulation does not contain any information collection or recordkeeping requirements as those terms are defined under the Paperwork Reduction Act because the information to be provided on request to state authorities will vary in each instance depending on the entity involved. Consequently, there is no requirement that the entities comply with identical reporting or recordkeeping requirements. 5 CFR 1320.7(c). Thus, the proposed regulation imposes no additional federal paperwork burden and the Paperwork Reduction Act does not apply.

Statutory Authority

This regulation is proposed pursuant to section 3(40) of ERISA (Pub. L. 97-473, 96 Stat. 2611, 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93-406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA and under Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pension and Welfare Benefit Administration.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93-406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27-74, 1-86 (51 FR 3521, January 28, 1986), 1-87 (52 FR 13139, April 21, 1987), and Labor Management Services Administration Order No. 2-6.

Section 2510.3-40 is also issued under sec. 3(40), Pub. L. 97-473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)).

Section 2510.3-101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3

CFR 1978 Comp. p. 275 and sec. 11018(d) of Pub. L. 99-272, 100 Stat. 82.

Section 2510.3-102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3 CFR comp., p. 275.

2. Part 2510 is amended by adding new § 2510.3-40 to read:

§ 2510.3-40 Plans established or maintained pursuant to one or more collective bargaining agreements.

(a) *General.* Section 3(40)(A) of the Employee Retirement Income Security Act of 1974 (the Act) provides that the term "multiple employer welfare arrangement" (MEWA) does not include an employee welfare benefit plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be a collective bargaining agreement(s). The purposes of the proposed regulation are to establish specific criteria that the Secretary finds must be met for an agreement to be a collective bargaining agreement and to establish criteria for determining when an employee benefit plan is established or maintained pursuant to such an agreement.

(b) *Collective Bargaining Agreement.* The Secretary finds, for purposes of section 3(40)(A) of the Act, that an agreement constitutes a collective bargaining agreement only if the agreement—

- (1) is in writing;
- (2) is executed by, or on behalf of, an employer of employees represented by an employee labor organization;
- (3) is executed by an employee labor organization;
- (4) is the product of good faith, arms-length bargaining between one or more employers and an employee labor organization or uniformly incorporates and binds one or more employers and an employee labor organization to the terms and conditions of another agreement which as originally negotiated and adopted satisfies the requirements of this section;
- (5) binds signatory employers and the employee labor organization to the terms of the agreement for a specified project or period of time, cannot be unilaterally amended or terminated and contains procedures for amending the terms and conditions of the agreement;
- (6) does not terminate solely as a result of failure to make contributions to the plan; and
- (7) in addition to the provision of health coverage, provides more than the minimum requirements mandated by law with respect to the terms and conditions of employment (e.g.,

provides for more than minimum wage and workers' compensation).

(c) *Established or Maintained.* An employee benefit plan is not established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40)(A) of the Act unless not less than 85 percent of the individuals covered by the plan are—

(1) employees, excluding supervisors and managers, currently included in one or more groups or bargaining units of employees covered by one or more collective bargaining agreements as defined in paragraph (b) of this section which expressly refer to the plan and provide for contributions thereto; or

(2) persons who were formerly employees described in paragraph (c)(1) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to Part 6 of title I of ERISA, 29 U.S.C. 1161-1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or

(3) beneficiaries of individuals included in paragraphs (c) (1) and (2) of this section.

(4) For purposes of this subsection, the following individuals covered by the plan or other arrangement shall not be counted in determining the total number of individuals covered by the plan—

(i) employees of the plan or another plan established or maintained pursuant to the same collective bargaining agreement(s);

(ii) employees of an employee labor organization that meets the requirements of paragraph (d)(1) of this section and that is a signatory to the collective bargaining agreement(s) pursuant to which the plan is maintained;

(iii) persons who were formerly employees described in paragraphs (c)(4) (i) and (ii) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to part 6 of title I of ERISA, 29 U.S.C. 1161-1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or

(iv) beneficiaries of individuals included in paragraphs (c)(4) (i), (ii) and (iii) of this section;

(v) provided that, for purposes of paragraphs (c)(4) (i) and (ii) of this section, in order to be an employee, an individual must work at least:

(A) 15 hours a week or 60 hours a month during the period of coverage under the plan, or