

a. Designate the existing text as paragraph (a) and remove “(b)(3)(i)” and add in its place “(b)(2)”;

b. Add new paragraphs (b), (c), and (d) to read as follows:

#### **§ 215.6 The Model Agreement.**

(a) \* \* \*

(b) A grant applicant that is an employer not initially a party to the Model Agreement but seeking to use the Model Agreement as the basis of the Department's certification may become party thereto by serving written notice of its desire to do so upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. In the event of any objection to the addition of such employer as a signatory, then the dispute as to whether such employer shall become a signatory shall be determined by the Secretary of Labor.

(c) A labor organization that is the collective bargaining representative of urban mass transportation employees in the service area of a grant recipient but not initially a party to the Model Agreement, and who may be affected by the assistance to the recipient, may become a party to the Model Agreement by serving written notice of its desire to do so upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to the Model Agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(d) Any signatory employer may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. Any labor organization may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. Written notice to withdraw must be served one hundred twenty (120) days prior to October 1, which is the annual renewal date of the Model Agreement.

7. Section 215.7 is amended as follows:

a. Remove “(b)(3)(ii)” and add “(b)(2)” in its place;

b. Remove the phrase “small urban and rural program under section 5311 of

the Federal Transit Statute” and add in its place “Other Than Urbanized program”.

c. Designate the existing text as paragraph (a) and add two sentences to the end; and

d. Add new paragraphs (b) and (c).

The revisions and additions read as follows:

#### **§ 215.7 The Special Warranty.**

(a) \* \* \* The Special Warranty Arrangement applicable to OTRB and “Other Than Urbanized” grants will be derived from the terms and conditions of the May 1979 Special Section 13(c) Warranty, and the Department's subsequent experience under 49 U.S.C. 5333(b). From time to time, the Department may update this Special Warranty Arrangement to reflect developments in the employee protection program.

(b) The requirements of 49 U.S.C. 5333(b) for OTRB and “Other Than Urbanized” grants are satisfied through application of a Special Warranty Arrangement certified by the Department of Labor; a copy of the current arrangement will be included on the OLMS Web site.

(c) The Federal Transit Administration will include the current version of the Special Warranty Arrangement, through reference in its Master Agreement, in each OTRB and “Other Than Urbanized” grant of assistance under the statute.

(1) The Federal Transit Administration will notify the Department that it is funding an OTRB or “Other Than Urbanized” grant by transmitting to the Department an information copy of each grant application upon approval of the grant.

(i) Each grant of assistance for an “Other Than Urbanized” program will contain a labor section identifying labor organizations representing transit employees of each subrecipient, the labor organizations representing employees of other transit providers in the service area, and a list of those transit providers. A sample format is posted on the OLMS Web site to facilitate the inclusion of this information in the grant application.

(ii) OTRB grants of assistance will contain a labor section identifying labor organizations representing transit employees of the recipient.

(2) The Department will notify labor organizations representing potentially affected transit employees of OTRB grants and inform them of their rights under the Special Warranty Arrangement.

#### **§ 215.8 [Amended]**

8. Section 215.8 is amended as follows:

a. Remove “Director,” and add in its place “Chief, Division of”;

b. Remove “Suite N5603,”; and

c. Add the phrase “or e-mailed to *OLMS-TransitGrant@dol.gov*” at the end of the paragraph.

**Victoria Lipnic,**

*Assistant Secretary for Employment Standards.*

**Donald Todd,**

*Deputy Assistant Secretary, Office of Labor-Management Standards.*

[FR Doc. E7-18040 Filed 9-13-07; 8:45 am]

**BILLING CODE 4510-CP-P**

## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **29 CFR Part 2520**

**RIN 1210-AB21**

#### **Multi-Employer Pension Plan Information Made Available on Request**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed regulation that, upon adoption, would implement amendments to the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), requiring the administrator of a multi-employer plan to provide copies of certain actuarial and financial information about the plan to participants and others upon request. The amendments, enacted by the Pension Protection Act of 2006, added subsection (k) to section 101 of ERISA. The proposed regulation would affect plan administrators, participants and beneficiaries of multi-employer plans, as well as employee representatives of such participants and employers that have an obligation to contribute to such plans.

**DATES:** Written comments on the proposed regulation should be received by the Department of Labor on or before October 15, 2007.

**ADDRESSES:** To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *www.regulations.gov* (follow

instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: ERISA 101(k) Regulation. Comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) and [www.dol.gov/ebsa](http://www.dol.gov/ebsa), and available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 502(a)(1) of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (PPA), which was enacted on August 17, 2006, amended the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), by adding section 101(k). Section 101(k)(1) of ERISA requires the administrator of a multi-employer pension plan, upon written request, to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that are required to be furnished are: (A) A copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide that the Secretary of Labor may assess

a civil penalty of not more than \$1,000 a day for each violation of section 101(k). Section 502(a)(3) of the PPA provides that the Secretary of Labor shall prescribe regulations under section 101(k)(2) not later than one year after the date of enactment of the PPA. Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

**B. Overview of Proposed Regulation**

Included in this notice is a proposed regulation that, upon adoption, would implement the new disclosure requirement under section 101(k) of the Act. Interested parties are invited to comment on all aspects of the regulation. The Department intends to publish a separate regulation implementing the Secretary's authority to assess civil penalties under section 502(c)(4) of ERISA at a later date.

Paragraph (a) of the proposed regulation provides that the administrator of a multi-employer pension plan shall furnish copies of actuarial, financial and funding-related documents to certain persons who make written requests to the plan.

For purposes of paragraph (a), a person entitled to request and receive documents is any participant within the meaning of section 3(7) of the Act; any beneficiary receiving benefits under the plan; any labor organization representing participants under the plan; or any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act. See § 2520.101-6(d). In this regard, the phrase "any employer that has an obligation to contribute to the plan" under section 101(k) of the Act has been construed under paragraph (d)(4) of the proposed regulation in a manner that is consistent with the construction given to similar language under section 101(f) of ERISA, which relates to annual funding notices of multi-employer defined benefit pension plans.<sup>1</sup>

Paragraph (b)(1) of the proposed regulation provides that the plan administrator must furnish the requested document or documents to the requester not later than 30 days after the date the written request is received by the plan, subject to the limitations in paragraphs (b)(3) and (b)(4).

Paragraph (b)(3) of the proposed regulation provides that a plan administrator is not required to furnish to any requester more than one copy of

a document described in paragraph (c) during any 12-month period. Thus, an eligible requester would not be entitled to receive more than one copy of the same financial report within a 12-month period. This limitation, however, does not mean that an eligible requester would not be entitled to request and receive copies of two different reports (e.g., one financial report and one actuarial report) during any 12-month period. For purposes of the application of this 12-month limitation, the Department is of the view that the 12-month period commences from the earlier of the date the plan actually responds to a request or the 30th day referenced in paragraph (b)(1) of the regulation.

Paragraph (b)(4) of the proposed regulation permits the plan administrator to charge the requester for the reasonable costs of furnishing documents. The PPA specifically authorizes the Department to prescribe in regulations the maximum amount that would be considered a reasonable charge for furnishing documents under this section. For this purpose, the Department proposes that a reasonable charge may not exceed the lesser of the actual cost to the plan for the least expensive means of acceptable reproduction of the document, or 25 cents per page, plus the cost of mailing or otherwise delivering the requested document. This standard adopts the existing reasonable charge standard under 29 CFR 2520.104b-30, but also permits the plan administrator to charge the requester the actual cost to the plan of mailing or delivering the document or information.

Paragraph (b)(2) provides that such documents must be furnished in a manner consistent with the general furnishing requirements set forth in 29 CFR 2520.104b-1 including the use of electronic media. See § 2520.104b-1(c). In this regard, wherever possible, the Department encourages plan administrators to use electronic media to furnish requested information in order to reduce compliance costs under the regulation.<sup>2</sup>

Paragraph (c) of the proposed regulation delineates the documents that must be disclosed pursuant to section 101(k). Paragraph (c)(1) provides that information subject to the disclosure requirement in paragraph (a) consists of a copy of any periodic

<sup>1</sup> See 29 CFR 2520.101-4(f)(4); 71 FR 1904, Jan. 11, 2006.

<sup>2</sup> As part of a separate rulemaking initiative, the Department is undertaking a review of the rules in paragraph (c) of § 2520.104b-1 relating to disclosure through electronic media. The Department is reviewing these rules in light of advances in technology and new disclosure requirements under ERISA following enactment of the PPA.

actuarial report (including any sensitivity testing) received by the plan that has been in the plan's possession for at least 30 days before the plan receives the written request; a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days before the plan receives the written request; and a copy of any application filed by the plan sponsor with the Secretary of the Treasury requesting an amortization extension under section 304 of the Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

To provide plan administrators with clarity regarding their disclosure obligations under section 101(k), the proposed regulation clarifies that financial reports prepared by advisors are subject to disclosure without regard to whether the advisor or advisors are fiduciaries within the meaning of section 3(21) of ERISA. See § 2520.101-6(c)(1)(ii). The Department specifically requests comments on whether this clarification alone provides sufficient certainty as to what financial reports are required to be disclosed, or, whether, in addition, the term "financial report" should also be clarified in regulation and, if so, how.

Paragraph (c)(2) provides that documents required to be disclosed under the regulation shall not include certain information. In this regard, paragraph (c)(2)(i) provides that required disclosures do not include the information or data which served as the basis for such report or application, e.g., the data behind or underlying a report or application. In addition, paragraph (c)(2)(ii) of the proposed regulation provides that disclosed reports or applications shall not include any information that the plan administrator reasonably determines to be either individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The Department specifically invites comment on whether clarification is needed with respect to determinations regarding what information should be considered "proprietary" or "individually identifiable" in this context and, if so, what standards should govern such determinations. In

this regard, paragraph (c)(2)(ii) of the proposed rule clarifies that, in responding to a request under the regulation, a plan administrator is required to inform the requester if the plan administrator withholds any information determined to be "proprietary" or "individually identifiable" within the meaning of the restrictions in paragraph (c)(2) of the proposed regulation.

Along with the proposed regulation under section 101(k), discussed above, this notice also includes amendments to 29 CFR 2520.104b-30, which provides guidelines for assessing a reasonable charge for furnishing plan documents pursuant to section 104(b)(4) of the Act (e.g., latest updated summary plan description, latest annual report, any terminal report, etc.). Language in § 2520.104b-30 could be construed as contrary to specific language in section 101(k) of ERISA, § 2520.101-6, and other PPA provisions amending title I of ERISA that expressly permit plan administrators to impose reasonable charges on requesters for the cost of furnishing the requested information, including handling and postage charges. Accordingly, minor conforming amendments are being proposed to paragraph (a) of § 2520.104b-30 to eliminate any ambiguity that may be caused by current § 2520.104b-30.

### C. Regulatory Impact Analysis

#### Summary

The proposed rule contains guidance necessary to implement the amendments made by new section 101(k) of the Act, as enacted by section 502(a)(1) of the PPA, which requires multiemployer plan administrators to provide, upon written request, copies of certain actuarial and financial reports about the plan to participants, beneficiaries, employee representatives, or any employer that has an obligation to contribute to the plan.

This disclosure requirement of PPA was enacted because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer plan pension system. Providing participants and beneficiaries, employee representatives, and contributing employers with greater access to actuarial and financial information regarding their plans will increase the transparency of the operation of multiemployer pension plans and afford all parties interested in the financial viability of such plans greater opportunity to monitor their funding

and financial status and to take appropriate action when necessary.

By clarifying certain terms used in section 101(k) of the Act, this regulation will also permit multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty and less cost. The increase in transparency of plan operations may also contribute to an atmosphere of greater accountability on the part of plan officials. These benefits have not been quantified.

The cost of the multiemployer plan disclosure requirement under section 101(k) of the Act and the rule is expected to total approximately \$2.3 million in the year of implementation, \$2.0 million in the second year, and \$1.4 million in the third year. These costs arise from logging in disclosure requests, copying and mailing the reports, and contracting for redacting individually identifiable and proprietary information from the reports. In addition, multiemployer plans will devote in-house staff time to complying with this regulation. The total hour burden is estimated to be 56,000 hours in 2008, 49,000 in 2009 and 37,000 in 2010. Both the dollar burden and the hour burden are projected to fall over the three-year period as interest in the aging inventory of existing documents subject to this regulation wanes. The dollar equivalent of the three-year hour burden is estimated to be \$4.4 million.

Because the costs of the proposed regulation arise from notice provisions in the PPA, the data and methodology used in developing these estimates are more fully described in the Paperwork Reduction Act section of this analysis of regulatory impact.

#### Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement

grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Although the Department believes that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order, the action has been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits. As elaborated below, the Department believes that the benefits of the rule justify its costs.

In assessing the costs and benefits of the rule and associated provisions of the Act, the Department endeavored to consider all of the major activities that will be carried out pursuant to them. For example, multiemployer pension plan administrators will have to make arrangements for copying and mailing the reports and redacting individually identifiable and proprietary information from the reports. Because the regulation does not require the creation of any new documents, the costs of the rule are limited to those arising from logging in requests and from copying, mailing and redacting disclosed reports.

The Department estimates that the total cost<sup>3</sup> for all multiemployer plans to comply with the regulation will average \$1,200 per plan year over the 2008–2010 periods. Given that total 2004 assets of multiemployer pension plans averaged about \$247 million in defined benefit plans and \$50 million in defined contribution plans, this annual cost is approximately 0.0012% of average plan assets in defined benefit plans and 0.0061% of assets in defined contribution plans. The Department believes that the transparency contained in the rule and associated section 101(k) of the Act will provide participants, beneficiaries, employee representatives, and contributing employers with important information regarding the funding and financial status of multiemployer pension plans. These disclosures will allow participants, beneficiaries, employee representatives, and contributing employers to learn more about the financial status of their plans and take action where appropriate. Although the benefits of this increased transparency have not been quantified, the Department has concluded that these benefits of the rule outweigh its modest costs. The

Department invites comments on this assessment and its conclusions.

#### *Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the proposed information collection request (ICR) included in the Proposed Regulation on Multiemployer Pension Plan Information Made Available on Request. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of

publication of the proposed regulation to ensure their consideration.

**PRA Addressee:** Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The proposed regulation would, upon adoption, implement the disclosure requirements of new section 101(k) of the Act, as added by section 502(a)(1) of the PPA. As described earlier in the preamble, section 101(k)(1) of the Act requires multiemployer plan administrators, upon written request, to furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (1) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (2) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary that has been in the plan's possession for at least 30 days; and (3) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

The information collection provisions of this proposed rule are found in section 2520.101–6(a) of the proposed rule, which requires multiemployer defined benefit and defined contribution pension plan administrators to furnish copies of actuarial, financial, and funding related documents to plan participants, beneficiaries, employee representatives, and contributing employers upon request. This information constitutes a third-party disclosure from the administrator to participants, beneficiaries, employee representatives, and contributing employers. Pursuant to section 2520.101–6(c)(2) the documents required to be disclosed shall not contain any information that the plan administrator reasonably determines to be either: (i) Individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or (ii) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

<sup>3</sup> Total cost is the sum of the dollar burden and the dollar equivalent of the hour burden.

The plan administrator must inform the requester if any such information is withheld.

### Annual Hour Burden

In order to estimate the potential costs of the disclosure provisions of section 101(k) of the Act and this proposed rule, the Department estimated the number of multiemployer defined benefit and defined contribution pension plans. Based on data derived exclusively from the Form 5500 for the 2004 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,533 multiemployer defined benefit plans<sup>4</sup> and 1,372 multiemployer defined contribution plans that would be subject to this disclosure requirement. Because section 101(k) of the Act and the regulation generally do not limit the class of documents that can be requested in any way by date of creation or receipt, the Department has assumed for purposes of this estimate that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports ("actuarial reports"), quarterly, semiannual, or annual financial reports ("financial reports"), and amortization extension requests filed with the IRS (hereafter "extension requests").<sup>5</sup>

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and contract with a service professional to redact individually identifiable and proprietary information from the reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 169,000 requests to disclose existing financial reports (an average of 110 per plan), 76,000 requests for existing actuarial reports (an average of 50 per plan), and 340 requests for existing amortization requests (an average of .22 per plan), and defined contribution plans will receive 96,000 requests for existing financial reports (an average of 70 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 341,000 requests for disclosures of existing inventory of reports.

The Department estimates that the total hour burden associated with

disclosing existing documents upon request over the 2008–2010 period will be 66,000 hours. This would include 61,000 clerical hours to log requests and to locate, copy, and mail paper disclosures<sup>6</sup> and 5,000 of legal hours (1.8 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests)<sup>7</sup> to redact individually identifiable and proprietary information.<sup>8</sup> The equivalent costs of these hours are \$2.1 million.<sup>9</sup>

For purposes of this analysis, the Department assumes that 40% of the existing documents would be requested in the year of implementation, 30% in the second year, and 15% in the third year, with the remaining 15% of disclosures of existing documents occurring after 2010.<sup>10</sup> Based on this allocation, the first year hour burden is estimated to be 56,000 hours (\$1.7 million equivalent cost), the second year hour burden would be 49,000 hours (\$1.5 million equivalent cost), and the third year burden would be 37,000 hours (\$1.1 million equivalent cost).

With respect to newly created reports, the Department estimates that multiemployer defined benefit plans will receive 107,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created amortization requests (an average of one per plan), and defined contribution plans will receive 82,000 requests for newly

created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 223,000 requests for disclosures of newly created reports.

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 25,000 hours. This includes 24,000 clerical hours to copy and mail paper disclosures and 1,200 legal hours to redact individually identifiable and proprietary information. The equivalent costs of these hours are \$744,000.

### Annual Cost Burden

The costs arising from this information collection derive from the direct costs of distributing the reports. As discussed above, the Department believes that a substantial number of the existing documents will be available only in paper form; therefore, costs will be incurred to copy and to distribute the reports by mail.<sup>11</sup> Some plans also will incur costs to hire a service provider to review the reports and redact individually identifiable and proprietary information from them.

The proposed rule allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document. The proposed rule does not allow plans to charge for redaction costs. The extent to which plans will impose such charges has not been estimated, but the Department has estimated the amount these charges would reimburse plans for their direct dollar cost if plans were to consistently charge requesters for all allowable charges. Because copy costs will generally not exceed 25 cents per page, the proceeds from these charges, if imposed, would reimburse plans for all mailing costs, for nearly all copy costs, and for an estimated 60 percent of the total dollar burden expected over the 2008–2010 period.

With respect to the existing inventory of documents for multiemployer defined benefit plans, the Department estimates copying costs of \$791,000 for the existing inventory of financial reports,<sup>12</sup>

<sup>11</sup> See footnote 9 above.

<sup>12</sup> The copying cost estimate is based on a \$5.84 average per document cost of disclosure of financial reports (estimated 40 pages per document times \$0.15 average copying cost per page), \$2.80 for actuarial reports (estimated 50 pages per document times \$0.06 average copying cost per page), \$0.24 for extension requests (estimated 12 pages per

<sup>4</sup> All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

<sup>5</sup> For purposes of this estimate, the Department assumes that plans will receive no requests for documents in existing inventory for years prior to 2002.

<sup>6</sup> This is the product of the total documents disclosed times the percentage of documents disclosed on paper times 15 minutes (to locate, copy, and mail paper documents).

<sup>7</sup> The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction.

<sup>8</sup> The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. The Department invites comments on this estimate. Documents are assumed to be disclosed on paper unless the requester has access to e-mail and requests a document that already exists in paper form.

<sup>9</sup> Hourly wage estimates were based on data from the Bureau of Labor Statistics Occupational Employment Survey (November 30, 2004) and the 2005 Employment Cost Trends. Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average \$25 per hour over the period based on metropolitan wage rates for Executive Secretaries and Administrative Assistants. Total labor cost for legal staff was estimated to average \$109 per hour based on metropolitan wage estimates for attorneys.

<sup>10</sup> This assumption is based on the expectation that interest in receiving existing documents will be high in the initial year of implementation and gradually decrease in subsequent years.

\$171,000 for the existing inventory of actuarial reports, \$41 for the existing inventory of extension requests. For multiemployer defined contribution plans, estimated copying costs for existing financial reports is \$455,000. Therefore, the total copying costs for the existing inventory of all reports would be \$1.4 million.

The Department estimates mailing costs of \$271,000 to deliver the existing inventory of financial reports, \$152,000 to deliver the existing actuarial reports, and \$129 to deliver existing extension requests.<sup>13</sup> Multiemployer defined contribution plans will incur an estimated \$157,000 of mailing costs to deliver existing financial reports. Therefore, the total mailing costs for the existing inventory of all reports is estimated to be \$581,000.

The costs to redact individually identifiable and proprietary information from the existing inventory of financial reports are \$702,000 and from the existing inventory of actuarial reports are \$263,000. The Department estimates that no costs will be incurred for redacting information from the existing inventory of amortization extensions. For multiemployer defined contribution plans, the redaction costs for existing financial reports are \$628,000. Therefore, the total redaction costs for the existing inventory of all reports are \$1.6 million.

With respect to newly created reports for multiemployer defined benefit plans, the Department estimates that the annual cost for all plans to copy the newly created financial reports would be \$212,000, the newly created actuarial reports would be \$30,000, and the newly created amortization extension requests would be \$21.<sup>14</sup> For multiemployer defined contribution plans, the copy cost for newly created financial reports would be \$176,000. Therefore, the total copying costs for all

document times \$0.02 average copying cost per page), and \$5.84 for defined contribution plan financial reports (estimated 50 pages per document times \$0.15 average copying cost per page). The average copying costs per page takes into account the estimated percentage of documents that are in color, and will, therefore, require more expensive color copying. The Department assumes that 70% of financial reports and 20% of actuarial reports are in color, and that 0% of extension requests are in color.

<sup>13</sup> The negligible cost for all plans to mail extension requests results from the interaction of various assumptions regarding these documents—a low request rate, a high rate of electronic disclosure, and a relatively low mailing cost arising from the modest length of these documents.

<sup>14</sup> The negligible cost for all plans to copy amortization requests results from a combination of assumptions about these documents—a low request rate, a high rate of electronic disclosure, and a low cost of copying a modest number of black and white pages.

newly created reports would be \$416,000.

The costs to mail the newly created financial reports would be \$73,000, newly created actuarial reports would be \$27,000, and newly created amortization extension requests would be \$66. For multiemployer defined contribution plans, the mailing costs for newly created financial reports would be \$55,000. Therefore, the total mailing costs for newly created reports would be \$155,000.

The estimated costs of contract work<sup>15</sup> to redact individually identifiable and proprietary information for newly created financial reports would be \$140,000 and \$44,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created amortization extension requests. For multiemployer defined contribution plans, the redaction cost for newly created financial reports is estimated to be \$126,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be \$310,000.

*Type of Review:* New collection.

*Agency:* Department of Labor, Employee Benefits Security Administration.

*Title:* Multiemployer Pension Plan Information Made Available on Request.

*OMB Number:* 1210–NEW.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions.

*Respondents:* 2,905.

*Frequency of Response:* Occasionally.

*Responses:* 960,000.

*Estimated Total Annual Hour Burden:* 56,000 (first year); 49,000 (second year); 37,000 (third year).

*Estimated Total Annual Cost Burden:* \$2.3 million (first year); \$2.0 million (second year); \$1.4 million (third year).

OMB will consider comments submitted in response to this request in its review of the request for approval of the ICR; these comments will also become a matter of public record.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is

<sup>15</sup> The Department has assumed that 70% of redaction work will be contracted.

not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

The Department has deemed that an employee benefit plan shall be considered a small entity if it has fewer than 100 participants.<sup>16</sup> By this standard, forthcoming data from the EBSA Private Pension Bulletin 2004 show that only 291 multiemployer pension plans or 10% of all multiemployer pension plans are small entities. The Department does not consider this to be a substantial number of small entities. Therefore, pursuant to section 605(b) of RFA, the Department hereby certifies that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the proposed regulation under section 101(k) of ERISA.

#### *Congressional Review Act*

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order

<sup>16</sup> The basis for this definition is found in section 104(a)(2) of the Act, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

12875, the rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding \$100 million on the private sector.

#### *Federalism Statement*

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposal does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of the Act provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of the Act supersede any and all laws of the States as they relate to any employee benefit plan covered under Act. The requirements of the proposal would not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

#### **List of Subjects in 29 CFR Part 2520**

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2520 as follows:

#### **PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE**

1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under

26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–4 also issued under sec. 103 of Pub. L. 108–218. Sec. 2520.101–6 also issued under sec. 502, Pub. L. 109–280, 120 Stat. 780.

#### **§ 2520.101–5 [Reserved]**

2. Add and reserve § 2520.101–5 of subpart A.

3. Add § 2520.101–6 to subpart A to read as follows:

#### **§ 2520.101–6 Multiemployer Pension Plan Information Made Available on Request.**

(a) *In general.* For purposes of compliance with the requirements of section 101(k) of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001, *et seq.*, the administrator of a multiemployer pension plan shall, in accordance with the requirements of this section, furnish copies of actuarial, financial and funding-related documents described in paragraph (c) of this section to plan participants, beneficiaries, employee representatives and contributing employers, described in paragraph (d) of this section.

(b) *Obligation to furnish.* (1) Subject to paragraphs (b)(3) and (b)(4) of this section, the administrator of a multiemployer pension plan shall, not later than 30 days after receipt of a written request for a document or documents described in paragraph (c) of this section from a plan participant, beneficiary, employee representative or contributing employer described in paragraph (d) of this section, furnish the requested document or documents to the requester.

(2) The plan administrator shall furnish documents pursuant to paragraph (b)(1) of this section in a manner consistent with the requirements of 29 CFR 2520.104b–1, including paragraph (c) of that section relating to the use of electronic media.

(3) Nothing in this section shall require a plan administrator to furnish to any requester a document described in paragraph (c) of this section more than once during any 12-month period.

(4) The plan administrator may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed—

(i) The lesser of: (A) the actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus

(ii) The cost of mailing or delivery of the document.

(c) *Documents to be furnished.* (1) For purposes of paragraph (a) of this section, and subject to paragraph (b) of this section, a plan participant, beneficiary,

employee representative or contributing employer described in paragraph (d) of this section, shall be entitled to request and receive a copy of any:

(i) Periodic actuarial report (including any sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days prior to the date of the written request;

(ii) Quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary which has been in the plan's possession for at least 30 days prior to the date of the written request; and

(iii) Application filed with the Secretary of the Treasury requesting an extension under section 304 of this Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

(2) For purposes of this section, the document(s) required to be disclosed shall not include:

(i) Any information or data which served as the basis for any report or application described in paragraph (c)(1) of this section, although nothing herein shall limit any other right that a person may have to review or obtain such information under the Act; or

(ii) Any information that the plan administrator reasonably determines to be either: (A) individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or (B) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. A plan administrator shall inform the requester if the plan administrator withholds any such information included within a request under paragraph (b) of this section.

(d) *Persons entitled to request documents.* For purposes of this section, a plan participant, beneficiary, employee representative or contributing employer entitled to request and receive documents includes:

(1) Any participant within the meaning of section 3(7) of the Act;

(2) Any beneficiary receiving benefits under the plan;

(3) Any labor organization representing participants under the plan;

(4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act.



4. Amend § 2520.104b-30 to revise paragraph (a) to read as follows:

**§ 2520.104b-30 Charges for documents.**

(a) *Application.* The plan administrator of an employee benefit plan may impose a reasonable charge to cover the cost of furnishing to participants and beneficiaries upon their written request as required under section 104(b)(4) of the Act, copies of the following information, statements or documents: The latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. Except where explicitly permitted under the Act, no charge may be assessed for furnishing information, statements or documents as required by other provisions of the Act, which include, in part 1 of title I, sections 104(b)(1), (2), (3) and (c) and 105(a) and (c).

\* \* \* \* \*

Signed at Washington, DC, this 7th day of September, 2007.

**Bradford P. Campbell,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. E7-18073 Filed 9-13-07; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. CGD05-07-088]

RIN 1625-AA00

#### **Safety Zone: Holiday Flotilla Fireworks Display, Motts Channel/Banks Channel, Wrightsville Beach, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes the establishment of a 1000 foot safety zone around a fireworks display for the North Carolina Holiday Flotilla occurring on November 24, 2007, in the vicinity of Motts Channel/Banks Channel and Wrightsville Beach, NC. This action is intended to restrict vessel traffic on Motts Channel. This safety zone is necessary to protect mariners from the hazards associated with fireworks displays.

**DATES:** Comments and related material must reach the Coast Guard on or before October 10, 2007.

**ADDRESSES:** You may mail comments and related material to Commander, Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, NC 28512. Sector North Carolina maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

MSTC Todd C. Mann, Marine Environmental Response Branch, Coast Guard Marine Safety Unit, Wilmington, North Carolina at (910) 772-2216.

**SUPPLEMENTARY INFORMATION:**

#### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05-07-088, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Sector North Carolina at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **Background and Purpose**

On November 24, 2007, the North Carolina Holiday Flotilla fireworks display will be held adjacent to Motts Channel/Banks Channel, Wrightsville Beach, NC. Spectators will be observing from both the shore and from vessels. Due to the need of protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

#### **Discussion of Proposed Rule**

The Coast Guard is establishing a safety zone on specified waters of Motts Channel. The regulated area will consist of a 1000 foot safety zone around Bird Island position 34-12-42N 077-48-26W south of the Seapath Yacht Club, Wrightsville Beach, NC. The safety zone will be enforced from 6 p.m. to 8 p.m. on November 24, 2007. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

#### **Regulatory Evaluation**

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of Motts Channel/Banks Channel from 6 p.m. to 8 p.m. on November 24, 2007. The safety zone