Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-4670 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on March 21 and 22, 1989, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on both days in Room 4200 and it is open to the public.

The agenda will include: a review of initiatives regarding advanced highway/vehicle technologies, activities regarding the study of driver fatigue, programs to address the driver shortage problem, status or various motor carrier safety regulations as well as the reasonable access regulations, implementation of the Commercial Drivers' Licensing program, the progress being made in the review of the future of the highway program, the status of the DOT drug testing program, and the status of legislation affecting the motor carrier industry. Reports and recommendations will also be presented from the Subcommittee Chairmen.

In conjunction with the full Committee meeting, the Subcommittee on Research will meet on March 20, 1989, to discuss priorities for and possible additions to FHWA's motor carrier research programs. This will be the first meeting of this Subcommittee. The Subcommittee meeting will begin at 9:30 a.m. in Room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. This Subcommittee meeting is also open to the public.

A second Subcommittee will also be meeting in conjunction with the full Committee meeting. The Subcommittee on Government and Taxation will be meeting on March 20, 1989, at 1:30 p.m. in Room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. The Subcommittee will be meeting to discuss potential recommendations on four points: (1) The illegal evasion of payments of Federal highway user fees, (2) the diversion of these fees for non-highway purposes, (3) exemptions to these fees, and (4) the desirability of greater uniformity with respect to the various State tax and operating regulations which motor carriers must observe. This Subcommittee meeting is also open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366-2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: February 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-4775 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Assistant Commissioner (EP/EO) Employee Plans Ad Hoc Group; Open Meeting

The first meeting of the Assistant Commissioner (Employee Plans and Exempt Organizations) Employee Plans Ad Hoc Group will be held on March 22, 1989 at the IRS Atlanta Service Center. The Service Center is located at 4800 Buford Highway, Atlanta, Georgia. The meeting will begin at 8:30 a.m. on Wednesday, March 22. The agenda will include the following topics:

Tour of Facility for Overview of Service Center Operations and Employee Plans Return Processing.

Discussion of Employee Plans Determination and Examination of Programs.

Discussion of Employee Plans Technical Issues.

Due to the Service Center's security requirements and limited conference space, notification of intent to attend the meeting must be made with Jane Baniewicz, Staff Assistant to the Assistant Commissioner, no later than March 13, 1989. Ms. Baniewicz may be reached on (202) 566-9204 (not toll-free).

FOR FURTHER INFORMATION CONTACT: Jane Baniewicz, Staff Assistant to Assistant Commissioner (EP/EO), (202) 566-9204 (not toll-free).

Robert I. Brauer,

Assistant Commissioner (E).

[FR Doc. 89-4746 Filed 2-28-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 39

Wednesday, March 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, No. 35/Thursday, February 23, 1989/7918–7919.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, February 28, 1989.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Response to FAA's proposed airworthiness directive applicable to certain small airplanes concerning flight into known icing conditions (NPRM) was added to the open portion of the meeting.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

February 27, 1989.

[FR Doc. 89–4885 Filed 2–27–89; 3:45 pm]

BILLING CODE 7533-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 7919, February 23, 1989.

PREVIOUSLY ANNOUNCED DATE OF MEETING: March 7, 1989.

CHANGE: Addition of the following item to the open meeting agenda:

Officer Compensation. (Postmaster General Anthony M. Frank)

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800

David F. Harris,

Secretary.

Paul J. Kemp,

Certifying Officer.

[FR Doc. 89–4843 Filed 2–27–89; 12:01 pm]

BILLING CODE 7710-12-M

federal register

Wednesday
March 1, 1989

Part II

Department of Labor

Pension and Welfare Benefits Administration

Department of the Treasury

Internal Revenue Service

Pension Benefit Guaranty Corporation

29 CFR Part 2520

Employee Benefits Reporting and Disclosure; Final Rule and Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

Annual Reporting and Disclosure Requirements

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains amendments to Department of Labor (Department) regulations relating to the annual reporting requirements under Part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In part, the amendments contained in this document are necessary to conform to revisions to the annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under Part 1 of Title I of ERISA.

Other amendments contained in this document are technical revisions updating the regulations to reflect changes in the annual reporting requirements, simplifying the regulations by deleting certain portions thereof which are duplicative of the instructions to the Form 5500 Series and incorporating address corrections to be used in submitting certain documents filed with the Department.

The amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under Part 1 of Title I of ERISA.

DATES: This regulation is effective January 1, 1988. The amendments are effective for reporting for plan years beginning on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 523-8515 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Note: This final regulation imposes no new information collection requirement in addition to the information collection requirement associated with the submission of the Form 5500 Series.

A. Background

On September 19, 1986, the Department, in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation, published in the **Federal Register** (51 FR 33500) proposed changes to the Form 5500 Series. On January 2, 1987, the Department published in the **Federal Register** (52 FR 84) proposed amendments to the annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) which, in part, were necessary to implement certain of the proposed changes to the Form 5500 Series. A number of technical amendments to the regulations were also proposed in order to update certain of the reporting and disclosure regulations, as well as to eliminate duplication of information also appearing in the instructions to the Form 5500 Series. The Form 5500 Series, as modified by the Agencies, is published in the same separate part of today's **Federal Register.**

The amendments published on January 2, 1987, were proposed to be effective for reporting for plan years beginning on or after January 1, 1987, to coincide with the implementation of revisions to the Form 5500 Series for the 1987 plan year. Subsequent to the publication of the proposed amendments, the Department, in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation, decided to defer forms revisions to the 1988 plan year filing cycle. Accordingly, the amendments contained herein will be effective for reporting for plan years beginning on or after January 1, 1988, to coincide with forms revisions implemented for the 1988 plan year filing cycle.

As discussed in more detail below, the Department received only three comments relating to the proposed amendments to the annual reporting regulations, and the Department has decided to adopt those amendments in the form proposed, except as otherwise noted.

B. Description of Amendments

Sections 2520.103-1 and 2520.103-2

Section 2520.103-1 describes the content of the Form 5500. The Department is adopting the following amendments to § 2520.103-1. (1) Amend paragraph (a)(2) to delete the reference to § 2520.104b-11, which prescribed the summary annual report requirements for plans which constitute a group insurance arrangement. Section 2520.104b-11 was superseded by § 2520.104b-10 pursuant to notice in the **Federal Register** (44 FR 19403) on April 3, 1979. (2) Amend paragraph (b) to delete references to specific line items on the Form 5500 Series in order to avoid future regulation amendments solely to accommodate minor item changes to the forms. (3) Amend paragraphs (b) and (c) to add a reference to Schedule C, the proposed schedule for reporting service provider, trustee, and certain service provider termination information (*see* revised Form 5500 Series in the same separate part of today's **Federal Register**). And, (4) amend paragraphs (c), (d), and (e) to eliminate references to the Form 5500-K, which was eliminated as a reporting form for plan years beginning after December 31, 1983 (*see* Internal Revenue Service Release 84-71, June 18, 1984).[1]

Section 2520.103-2 describes the contents of the Form 5500 for plans which constitute a group insurance arrangement, as defined in § 2520.104-43. Paragraph (b) of § 2520.103-2 is amended to eliminate the references to specific line items on the Form 5500, consistent with the amendments to § 2520.103-1.

Section 2520.103-6

Section 2520.103-6 sets forth the definition of reportable transactions for the Form 5500. The Department is amending paragraph (b)(1)(ii) to delete the reference to a specific line item on the Form 5500 Series.

Under paragraph (c) of § 2520.103-6, a reportable transaction is defined as any transaction or series of transactions involving an amount in excess of 3 percent of the current value of a plan's assets.[2] The Department is amending paragraph (c) of § 2520.103-6 by adding a new subparagraph (c)(4) which raises the threshold for reportable transactions from 3 percent to 5 percent for plan years beginning on or after January 1, 1988. This amendment is necessary to implement the increase in the threshold for reportable transactions from 3 percent to 5 percent on the revised Form 5500 Series (*see* in the same separate part of today's **Federal Register**).

The Department also is modifying the examples set forth in paragraph (e) of § 2520.103-6 to reflect the change from 3 percent to 5 percent.

This amendment is being adopted in accordance with the authority granted the Secretary under sections 104(a)(3) and 110, pursuant to which utilization of the Form 5500 under § 2520.103-1 constitutes a limited exemption for welfare plans and an alternative method

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[1] Form 5500-K was the Return/Report of Employee Benefit Plan for Sole Proprietorships and Partnerships. The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 324 (1982)) repealed most of the special limitations and restrictions on the design and operation of these Keogh plans, resulting in these plans having the same contribution, deduction, and vesting requirements, and similar coverage requirements, as other plans. These plans are now required to file either Form 5500-C or Form 5500-R.

[2] *See* section 103(b)(3)(H) of ERISA.

of compliance for pension plans. The findings required under section 104(a)(3) and section 110 with respect to the use of the Form 5500 as a limited exemption and alternative method of compliance are discussed below.

Section 2520.103–10

Section 2520.103–10 describes the format and content of the financial schedules included as part of the Form 5500. The Department is amending § 2520.103–10 as follows: (1) Delete the references to specific line items (e.g., item 22) in order to avoid the necessity of future amendments to the regulations to accommodate minor changes in the forms; and (2) in an effort to eliminate duplication, delete the schedule formats and other general explanatory information appearing in the regulation which also appears in the instructions to the forms.[3]

The Department had proposed an amendment to § 2520.103–10 that would add a reference to the Form 5500–C to accommodate a proposed change to the Form 5500–C requiring plans with 26 to 99 participants to file a schedule of loans and leases in default (*see* proposed revisions to the Form 5500 Series, 51 FR 33500). Under the revised Form 5500 Series being adopted by the Agencies (*see* in the same separate part of today's **Federal Register**), plans filing the Form 5500–C will not be required to file a schedule of loans and leases in default. Accordingly, the Department is not adopting this amendment.

Section 2520.104–41

Section 2520.104–41 provides a simplified method of annual reporting for plans with fewer than 100 participants. Paragraph (c)(2) of that section requires administrators of Keogh plans to file the Form 5500–K. Because the Form 5500–K has been eliminated as an annual reporting form, § 2520.104–41 is being amended to delete paragraph (c)(2) in its entirety.

Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the summary annual report and prescribes the formats for such reports. Included as an appendix to the regulation is a cross-reference guide which corresponds the line items of the summary annual report formats to the line items on the Forms 5500 and 5500–C to facilitate completion. This document includes a revised appendix which takes into account the changes to the revised Form 5500 Series being adopted by the Agencies.

Section 2520.104–46

Section 2520.104–46 provides a waiver of the examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants. This section is being amended to delete the reference to Form 5500–K appearing in paragraph (d).

Address Corrections to Reporting Regulations

Since the publication of many of the reporting regulations, the Office of Pension and Welfare Benefit Programs has changed its name to the Pension and Welfare Benefits Administration, pursuant to Secretary of Labor's Order No. 1–86. In addition, the agency has changed the room for receipt of documents required to be filed under Title I of ERISA with the Department. In order to facilitate the filing and receipt of documents, the Department is amending the following sections to provide an updated address: §§ 2520.104–22(c); 2520.104–23(c); 2520.014a–3(d), and 2520.104a–4(c).

C. Discussion of Comments

The Department received three comment letters concerning the proposed amendments to the annual reporting regulations. Two of the letters contained comments relating to § 2520.103–6. One of the commentators suggested that raising the reportable transaction threshold from 3 percent to 5 percent would permit, in the case of a plan with substantial assets, transactions involving a significant amount of assets to go unreported. The commentator also recommended that the dates of reportable transactions be required to be reported. The Department recognizes that by increasing the reportable transaction threshold from 3 percent to 5 percent, certain transactions heretofore required to be reported will go unreported. However, the Department has concluded, on the basis of its enforcement experience over the past ten years, that the disclosure of 5 percent transactions will enable it to identify transactions that are sufficiently large to suggest that fiduciary misconduct may be involved and, therefore will provide adequate reporting to the Department. For the same reason, the Department believes that the 5 percent threshold will provide adequate disclosure to plan participants and beneficiaries. It is also noted that the 5 percent threshold is consistent with the threshold under generally accepted accounting principles for identifying "significant" investments, which are required to be reported on the financial statements of plans. Accordingly, the Department has decided to adopt the 5 percent threshold criteria for reportable transactions. The Department also has decided not to require the dates of reportable transactions to be reported. The Department believes that sufficient information concerning reportable transactions is required to be reported, without transaction dates, to apprise the Department and plan participants and beneficiaries of potential abuses. Moreover, because the report is required to be filed annually, the specific date of a particular transaction is of less significance.

The other commentator recommended that the definition of a reportable transaction under § 2520.103–6 be amended to exclude the following transactions involving pooled separate accounts maintained by insurance companies: (a) New employer deposits; (b) transfers between pooled separate accounts; and (c) transfers between general assets accounts and pooled separate accounts. The commentator suggests that the reporting of such 5 percent transactions with pooled separate accounts detracts from other transactions that should be reported. As noted by the commentator, a plan meeting the requirements of 29 CFR 2520.103–4 is not required to report on its annual report individual transactions of the pooled separate account; however, such a plan is required to report any plan transactions with the pooled separate account, including certain reportable transactions under § 2520.103–6. In this regard, the Department notes that, while § 2520.103–6 does not exempt all plan transactions with pooled separate accounts, paragraph (b)(2)(ii)(G) of that section relating to transactions which occurred prior or subsequent to a reportable transaction with the same person during the plan year, does significantly reduce the reporting that would otherwise be required. The Department further notes that, pursuant to 29 CFR 2520.103–11(b)(2)(vi), units of participation in a pooled separate account are excluded from the definition of "assets held for investment" for purposes of the asset schedules required to accompany the annual report. In view of the aforementioned reporting exceptions and the adoption herein of an amendment increasing the reportable transaction threshold from 3 percent to 5

[3] For clarification purposes, the regulation continues to specify certain transactions with a party-in-interest that are not required to be reported on that schedule. In this respect, it should be noted that, although the form does not require the reporting of publicly traded securities transactions involving a party-in-interest, such transactions are not in all cases exempt from the prohibited transaction provisions of section 406 of ERISA.

percent, the Department believes that the reporting of new employer deposits, transfers between pooled separate accounts, and transfers between general asset accounts and pooled separate accounts does provide useful information concerning basic transactions involving pooled separate accounts, without imposing undue burdens on either plan administrators or insurance companies maintaining such accounts.

The third commentator offered suggested changes to the requirements of § 2520.103-9, relating to the direct filing of common or collective trust and pooled separate account information by banks and insurance carriers with the Department. The Department did not propose any amendments to § 2520.103-9, accordingly, the suggested changes to that section are beyond the scope of the annual reporting amendments being adopted herein.

D. Departmental Findings

For purposes of Part 1 of Title I of ERISA, the filing of a completed Form 5500 (including the report of an independent qualified public accountant and any required statements and schedules) by plans with 100 or more participants constitutes compliance with the limited exemption and alternative method of compliance prescribed in paragraph (b) of § 2520.103-1, promulgated in accordance with the authority granted the Secretary of Labor (the Secretary) under sections 104(a)(3) and 110 of ERISA.

Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are found to be inappropriate. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements, if the Secretary finds: (1) That the use of the alternative is consistent with the purposes of ERISA and that it provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) that application of the statutory reporting and disclosure requirements would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) that the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.[4]

As reflected in the revised Form 5500 Series (*see* in the same separate part of today's **Federal Register**), and the amendment to § 2520.103-6, raising the threshold of reportable transactions from 3 percent to 5 percent, a number of changes are being adopted which affect the information required to be reported and disclosed on the Form 5500. With regard to these changes, the Department has made the following findings under sections 110 and 104(a)(3) with regard to the utilization of the revised Form 5500 (and statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103-1(b):

1. The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that information delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I of ERISA is required to be included on or as part of the Form 5500, as revised. With regard to the revision to the definition of "reportable transaction" for purposes of the Form 5500 to include only transactions involving amounts in excess of 5 percent of the plan's assets, the Department believes such a change will assure the reporting of significant transactions which may reveal fiduciary misconduct which is the purpose underlying the 3 percent statutory requirement in section 103. The Department, on the basis of its experience with enforcement cases over the past ten years of ERISA, has concluded that disclosure of 5 percent transactions will enable it to identify transactions that are sufficiently large to suggest that fiduciary misconduct may be involved.[5] For the same reason, the Department believes the 5 percent threshold will provide adequate disclosure to plan participants and beneficiaries.

2. The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

With regard to the change from 3 percent to 5 percent threshold for reportable transactions, the Department's experience has been that a 3 percent threshold has resulted in the reporting of information which is not necessary for the effective administration of ERISA. Therefore, reporting information regarding transactions involving more than 3 percent, but less than 5 percent of a plan's assets, has resulted in additional costs and unreasonable administrative burdens to plans.

3. Finally, taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner; thereby, facilitating the disclosure of such information to plan participants.

With regard to the 5 percent reportable transaction threshold, the Department's experience has been that the 3 percent threshold tended not to reveal abusive cases that would not otherwise have been revealed at a 5 percent threshold. The additional disclosure of information regarding transactions involving more than 3 percent, but less than 5 percent, therefore only provides participants and beneficiaries with information of negligible value and this information is often voluminous, especially in the case of larger plans. The Department believes that the revised 5 percent threshold should provide for clearer and more

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[4] Under the authority of sections 104(a)(2)(A) and 104(a)(3), the Secretary has prescribed by regulation a simplified annual report for pension and welfare plans which cover fewer than 100 participants (Form 5500-C). *See* 29 CFR 2520.104-41. Pursuant to this authority, the Department has made changes to the 1988 Form 5500-C. These changes are described in the preamble accompanying the publication of the 1988 annual report forms. (*See* the "notices" section of today's Federal Register.)

[5] In the interest of efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible, with generally accepted accounting principles. Recommendations of the Employee Benefit Plans and ERISA Special Committee of the American Institute of Certified Public Accountants in concert with the Financial Accounting Standards Board's Statement No. 35 indicate that, under generally accepted accounting principles, investments representing 5 percent or more of net assets are treated as "significant," and therefore, must be reported on financial statements.

concise reporting of those transactions which because of their size require closer scrutiny.

Further, the Department has determined under section 104(a)(3) that application of the statutory reporting requirements to the extent that the revisions to Form 5500 modify them would be inappropriate in the context of welfare plans for the reasons discussed above.

Regulatory Flexibility Act

The Department has determined that this regulation would have no significant economic impact on small entities. In conducting the analysis required under the Regulatory Flexibility Act, it is estimated that adoption of the amendments to the annual reporting regulations—which conform to the changes being made in the annual report forms (Form 5500 Series), make additional technical corrections, and eliminate certain duplicative language—will impose no additional costs on small entities. The purpose of these revisions is to simplify and reduce the burden attributable to the annual reporting requirements.

Executive Order 12291

The Department has determined that this regulatory action does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or 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 or export markets.

Paperwork Reduction Act

The amendments to the annual reporting regulations include revisions which are necessary to conform the regulations to changes in the annual report form (Form 5500 Series) which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511). The approved information collection for the Form 5500 Series annual report is assigned control number 1210–0016.

List of Subjects in 29 CFR Part 2520

Accountants, Actuaries, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Health insurance, Life insurance, Pensions, Pension and Welfare Benefits Administration, Reporting and recordkeeping requirements.

Final Regulation

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is hereby amended 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: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–25, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order No. 2–6.

2. In § 2520.103–1, paragraphs (b)(1) and (c) are revised to read as follows:

§ 2520.103–1 Contents of the annual report.

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule B "Actuarial Information," Schedule C "Service Provider/Trustee/Service Provider Termination Information," and the financial schedules described in § 2520.103–10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104–43 and 2520.104a–6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be a completed Form 5500–C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)," or a completed Form 5500–R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," and any statements or schedules which are required to be attached to these forms, including Schedule A "Insurance Information," and Schedule B "Actuarial Information." *See* the instructions ("What to File" and "Specific Instructions") for these forms.

* * * * *

3. Section 2520.103–1 is further amended as follows:

a. In paragraph (a)(2), in the second sentence, remove the words "or § 2520.104b–11."

b. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the."

c. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the."

d. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the."

e. In paragagh (d), remove the words "Forms 5500–C, K, or R" and insert in their place "Forms 5500–C, or R."

f. In paragraph (e), in the first sentence, remove the reference to "5500–K."

4. Section 2520.103–2 is amended by revising paragraph (b)(1) to read as follows:

§ 2520.103–2 Contents of the annual report for a group insurance arrangement.

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule C "Service Provider/Trustee/Service Provider Termination Information," and the financial schedules described in § 2520.103–10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

5. Section 2520.103–2 is further amended as follows:

a. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the."

b. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the."

c. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the."

6. Section 2520.103–6 is amended by revising paragraph (c)(1) introductory text, adding paragraph (c)(4), and revising paragraph (e) to read as follows:

§ 2520.103-6 Definition of reportable transaction for annual return/report.

* * * * *

(c) *Application.* (1) Except as provided in paragraph (c)(4) of this section, this provision applies to—

* * * * *

(4) For plan years beginning on or after January 1, 1988, 5 percent shall be substituted for 3 percent in paragraphs (c) (1) and (2) of this section for purposes of determining whether a transaction or series of transactions constitutes a reportable transaction under this section.

* * * * *

(e) *Examples.* These examples are effective for reporting for plan years beginning on or after January 1, 1988.

(1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 6 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 8 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this section, the 6 percent stock transaction is a reportable transaction for the plan year because it exceeds 5 percent of the current value of plan assets. The 8 percent land transaction is also reportable under paragraph (c)(1)(i) of this section because it exceeds 5 percent of the current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of the plan assets. Two months later, AAA plan loans ZZZ corporation an amount of money equal to 3.5 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which when aggregated involves 5.5 percent of plan assets.

(3) During the plan year NMN plan sells to OPO corporation a commercial property that represents 3.5 percent of the current value of plan assets. OPO simultaneously executes a note and mortgage on the purchased property to NMN which represents 3 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, NMN has engaged in a reportable series of transactions with or in conjunction with the same person, OPO corporation, consisting of a simultaneous sale of property and a loan, which, when aggregated, involves 6.5 percent of the current value of plan assets.

(4) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common stock in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 4 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 3.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 3.5 percent of plan assets aggregate to exceed 5 percent of the total value of plan assets.

(5) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries in an amount equal to 6 percent of plan assets. The common stock of Able Industries is not listed on any national securities exchange or quoted on NASDAQ. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases short term debt obligations of Charley Company through broker-dealer Y in the amount of 0.2 percent of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section.

(6) At the beginning of the plan year, Plan X purchases from Bank B certificates of deposit having a 180 day maturity in an amount equal to 6 percent of plan assets. Bank B is a national bank regulated by the Comptroller of the Currency. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through Bank B 91-day Treasury bills in the amount of 0.2 percent of plan assets. This purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because the purchase of the Treasury bills as well as the purchase of the certificates of deposit are not considered to involve a security under the definition of "securities" in paragraph (b)(2)(ii) of this section.

(7) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries, a New York Stock Exchange listed security, in an amount equal to 6 percent of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through broker-dealer Y, acting as agent, common stock of Baker Corporation, also a New York Stock Exchange listed security, in an amount equal to 0.2 percent of plan assets. This latter purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because it is not a transaction "with or in conjunction with a person" pursuant to paragraph (b)(3)(ii) of this section.

7. Section 2520.103-6 is further amended in paragraph (b)(1)(ii) by removing the words "on line 13(h) of Form 5500 Annual Return/Report" and insert in their place "as total assets on Form 5500 Annual Return/Report."

8. Section 2520.103-10 is revised to read as follows:

§ 2520.103-10 Annual Report Financial Schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to 29 CFR 2520.103-1(a)(2) or the report for a group insurance arrangement pursuant to 29 CFR 2520.103-2, shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)", include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules—(1) Assets held for investment.* A schedule of all assets held for investment purposes at the end of the plan year (see 29 CFR 2520.103-11).

(2) *Assets acquired and disposed within the plan year.* A schedule of all assets acquired and disposed of within the plan year (see 29 CFR 2520.103-11).

(3) *Party in interest transactions.* (i) Except as provided in paragraph (b)(3)(ii) of this section, a schedule of each transaction involving a person known to be a party in interest.

(ii) Do not include—

(A) A transaction to which a statutory exemption under part 4 of Title I applies;

(B) A transaction to which an administrative exemption under section 408(a) of the Act applies; or

(C) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code of 1954, as amended, applies.

(4) *Obligations in default.* A schedule of all loans or fixed income obligations which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103–6.

9. Section 2520.104–22 is amended by revising paragraph (c) to read as follows:

§ 2520.104–22 Exemption from reporting and disclosure requirements for apprenticeship and training plans.

* * * * *

(c) *Filing Address.* The notice referred to in paragraph (a) of this section shall be filed with the Secretary of Labor by mailing it to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

10. Section 2520.104–23 is amended by revising paragraph (c) to read as follows:

§ 2520.104–23 Alternative method of compliance for pension plans for certain selected employees.

* * * * *

(c) *Filing Address.* Statements may be filed with the Secretary of Labor by mailing them addressed to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

* * * * *

11. Section 2520.104–41 is amended by revising paragraph (c) to read as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants shall file a Form 5500–C "Return-Report of Employee Benefit Plan (with fewer than 100 participants)," or, as appropriate, a Form 5500–R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," in the manner prescirbed in § 2520.104a–5.

12. Section 2520.104–46 is amended by revising paragraph (d) to read as follows:

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee plans with fewer than 100 participants.

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500–C or, as appropriate, Form 5500–R and all schedules called for therein. *See* § 2520.104–41.

(2) This section does not apply to a plan which elects to file an Annual Return/Report Form 5500 pursuant to § 2520.103–1(d).

13. Section 2520.104a–3 is amended by revising paragraph (d) to read as follows:

§ 2520.104a–3 Summary plan description.

* * * * *

(d) *Filing Address.* The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

* * * * *

14. Section 2520.104a–4 is amended by revising paragraph (c) to read as follows:

§ 2520.104a–4 Material modifications to the plan and changes in plan description information.

* * * * *

(c) *Filing Address.* The summary description of material modifications to the plan and changes in the information required by section 102(b) shall be filed with the Secretary of Labor by mailing it to SMM, Pension and Welfare Benefits Administration, Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N–5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

§ 2520.104b–10 [Amended]

15. Section 2520.104b–10 is amended by revising the Appendix summary annual report cross-reference guide as follows:

APPENDIX—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR item	Form 5500 line items	Form 5500–C line items
A. Pension Plan		
1. Funding arrangement	11 & 12	11 & 12.
2. Total plan expenses	35h	31j.
3. Administrative expenses	35g col.b	31h.
4. Benefits paid	35e(iii) col.b	31g(ii) col.b.
5. Other expenses	35f	31i.
6. Total participants	7(f)	7(a)(ii).
7. Value of plan assets (net):		
a. End of plan year	35l	30k col.b.
b. Beginning of plan year	35k	30k col.a.
8. Change in net assets	35l minus 35k	30k col.b minus col.a.
9. Total income	35d	31f.
a. Employer contributions	35a(i)(A) & 35a(ii) if applicable	31a(j) & 31(b) if applicable.
b. Employee contributions	35a(i)(B) & 35a(ii) if applicable	31a(ii) & 31b if applicable.
c. Gains (losses) from sale of assets	35b(iv) col.b	31d.
d. Earnings from investments	35b(i)G col.b, 35b(ii)B col.b, 35b(iii), 35b(v), & 35b(vi)	31c.
10. Total insurance premiums	35e(ii) or total of Schs. A Part II, item 5(b)	Total of Schs. A, Part II, item 5(b).
11. Funding deficiency:		
a. Defined benefit plans	Sch. B, item 9m or 10h	Sch. B, item 9m or 10h.
b. Defined contribution plans	15b(iii)	15b(iii)

APPENDIX—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 line items	Form 5500-C line items
B. Welfare Plan		
1. Name of insurance carrier	All Schs. A, Part I, item 2a	All Schs. A, Part I, item 2a.
2. Total insurance premiums	All Schs. A, Part III, total of item 8c	All Schs. A, Part III, total of item 8c.
3. Experience-rated premiums	All Schs. A, Part III, item 9a(iv)	All Schs. A, Part III, item 9a(iv).
4. Experience-rated claims	All Schs. A, Part III, item 9b(iv)	All Schs. A, Part III, item 9b(iv).
5. Value of plan assets (net):		
a. End of plan year	35l	30k col.b.
b. Beginning of plan year	35k	30k col.a.
6. Change in net assets	35l minus 35k	30k col.b minus col.a.
7. Total income	35d	31f.
a. Employer contributions	35a(i)(A) & 35a(ii) if applicable	31a(i) & 31b if applicable.
b. Employee contributions	35a(i)(B) & 35a(ii) if applicable	31a(ii) & 31b if applicable.
c. Gains (losses) from sale of assets	35b(iv) col.b	31d.
d. Earnings from investments	35b(i)(G) col.b, 35b(ii)(B) col.b, 35b(iii), 35b(v), and 35b(vi).	31c.
8. Total plan expenses	35h	31j.
9. Administrative expenses	35g col.b	31h.
10. Benefits paid	35e(iii) col.b	31g(ii) col.b

Signed at Washington, DC, this 23rd day of February, 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits Administration, U.S. Department of Labor.

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