

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Part 2628**

RIN 1212-AA78

**Annual Financial and Actuarial Information Reporting**

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation is amending its regulations to implement section 4010 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. Section 4010 requires controlled groups maintaining plans with large amounts of underfunding to submit annually to the PBGC financial and actuarial information as prescribed by the PBGC. **EFFECTIVE DATE:** January 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Frank H. McCulloch, Senior Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4116 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** On July 6, 1995, the PBGC published in the Federal Register (60 FR 35308) a proposed regulation implementing section 4010 of ERISA. The PBGC received over 20 comments. Section 4010 requires a small number of large controlled groups—those with covered pension plans that (1) have more than \$50 million in unfunded vested benefits in the aggregate, (2) have missed contributions in excess of \$1 million, or (3) have received funding waivers in excess of \$1 million—to file annual financial and actuarial information.

**Who Must File—\$50 Million Test**

In response to comments, the final regulation gives controlled groups the option of using 100% of the 30-year Treasury interest rate and the fair market value of assets (instead of 80% of the 30-year rate and the actuarial value of assets) solely for purposes of calculating the \$50 million threshold test. These are the standards that will apply for calculating the variable rate premium under ERISA section 4006 after the Secretary of the Treasury adopts revised mortality tables for post-1999 plan years. Consistent with the post-1999 rules, the PBGC is conditioning use of the option on the use of prescribed mortality tables. For now, controlled groups may continue to use GAM-83 mortality tables. If the PBGC amends the mortality tables under

its valuation regulation before the Secretary of the Treasury's revised mortality tables must be used.

The PBGC did not adopt the suggestion that the PBGC waive reporting if the controlled group's plans meet some prescribed funding percentage or are fully funded on an ongoing basis. The absolute size of the underfunding represents a large exposure to the PBGC and, in many cases, to plan participants.

**Who Must File—Missed Contributions and Waivers in Excess of \$1 Million**

In response to comments, the final regulation provides that missed contributions will not lead to a reporting obligation if they are paid within a ten-day grace period. The final regulation also clarifies that, during the amortization period of a minimum funding waiver, the waiver will be considered to be outstanding (thereby requiring reporting) unless there is a credit balance in the funding standard account that is sufficient to pay the outstanding balance of the waiver and not available to satisfy future minimum funding requirements.

**Exempt Entities**

In response to comments, the final regulation exempts the controlled group from submitting information for de minimis entities ("exempt entities") and exempts those entities from all reporting requirements. An entity is de minimis if it does not sponsor a nonexempt plan and its revenue, net assets and annual operating income are five percent or less of the controlled group's revenue, net assets and annual operating income. Alternatively, the net asset test or the annual operating income test is satisfied if an entity's net assets or annual operating income, respectively, is \$5 million or less.

Commenters suggested that the PBGC exempt certain foreign members and new members of controlled groups from the regulation's requirements. In most cases, foreign corporations should not present problems for controlled groups. A foreign corporation with U.S. subsidiaries or a domestic corporation with foreign subsidiaries will normally include each foreign entity in its consolidated financial statements. The regulation does not require individual financial information concerning a foreign company covered by consolidated financial statements unless it sponsors a U.S. plan. The PBGC will consider waivers or extensions in the limited cases where foreign companies are not included in consolidated financial statements and are not already

exempt under the new de minimis exemption.

Other commenters requested a grace period with respect to entities that become members of a controlled group late in the information year. The de minimis rule will deal with many of these situations. Filers may also request waivers or extensions where information about a filer or a plan is not available by the due date because the filer entered the controlled group late in an information year.

**Actuarial Information**

The proposed regulation required filers to provide the value of plan benefit liabilities and assets, certain participant data matrices, and an actuarial valuation report containing or supplemented with specified information. The final regulation eliminates the requirement that controlled groups routinely submit the participant data matrices. (The PBGC may request this information.) The regulation permits the enrolled actuary to qualify the actuarial certification in the same manner as is permitted for the Form 5500, Schedule B.

Commenters objected to having to determine the value of benefit liabilities using the PBGC's termination assumptions. The PBGC needs this information to determine the risk of a transaction to participants and to premium payers and to determine whether to terminate a plan. Other liability measures do not reflect plan underfunding on a termination basis; they can seriously understate the PBGC's exposure for plans subject to this regulation. The comments confirmed that the cost of calculating benefit liabilities consists mainly of a one-time cost for adding the PBGC's termination assumptions to existing computer programs. The final regulation simplifies the calculation somewhat by providing for use only of the PBGC's annuity methodology (rather than both its annuity and lump sum methodology).

**Exempt Plans**

The proposed regulation exempted reporting for plans with fewer than 500 participants and plans with no unfunded benefit liabilities (using the PBGC's termination assumptions), other than plans with funding waivers or missed contributions. The final regulation keeps but simplifies this exemption. Solely for exemption purposes, the controlled group may determine the value of a plan's benefit liabilities using the plan's retirement assumptions (instead of the PBGC's expected retirement age assumptions).

### Additional Information

Some commenters questioned the provision under which the PBGC may require filers to submit additional information within ten days. Commenters suggested that the response time be lengthened, that the type of information that may be requested be limited, or that the provision be deleted.

It is the PBGC's ability to get the additional information quickly that allows the PBGC to limit the information that controlled groups must submit on a routine basis. The PBGC will grant extensions of time to respond where a filer demonstrates that it is making a reasonable and good faith effort to respond to the information request.

In response to comments, the final regulation clarifies that this additional information is information that could have been required annually (i.e., information that is necessary to determine a plan's assets and liabilities, or the financial status of a filer, for any period through the end of the information year).

### Confidentiality

Some commenters expressed concern about the confidentiality of filer tax information. The regulation does not require the submission of a filer's tax return as part of an annual report; it merely permits the filer to substitute its tax return for the audited or unaudited financial statements required by the statute. Moreover, the statute and regulation provide for confidentiality of information similar to that afforded to Hart-Scott-Rodino antitrust submissions. Filers may request that information they submit not be disclosed to other members of their controlled group.

### Information Year

One commenter suggested that the regulation eliminate the concept of an information year and that filers instead be required to use the same reporting year as they use for Form 5500. The information year is a simplifying measuring period that does not require any new reports. For most controlled groups the information year will be the same as the fiscal year on which they prepare their consolidated returns. (The Form 5500 reporting year is based on each plan's plan year, which may not match the plan years of other plans or the fiscal years of controlled group members.)

In response to comments, the final regulation excludes the fiscal years of exempt entities in determining the information year for a controlled group.

The final regulation clarifies that the controlled group need not restate consolidated financial statements solely because they include information on entities that are not members of the controlled group or that are exempt entities.

### Due Date

Commenters questioned the due date for information—105 days after the close of a filer's information year. This due date is coordinated with the Securities and Exchange Commission's annual reporting date for public companies. In most instances, controlled groups will have prepared audited financial statements prior to that date for public filing and can simply refer to those filings in their submissions to the PBGC. The actuarial information required by that date is similar to pension information required by Financial Accounting Standard 87 that must be included in those financial statements. (The regulation generally allows other actuarial information to be delayed until 15 days after the filing deadline for the Form 5500.)

If the due date presents problems for non-public companies or in other unusual circumstances, filers should request extensions of the deadlines. Filers experiencing problems in preparing or submitting required information should apply for extensions as early as possible, rather than shortly before the due date.

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

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

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies (for the reasons stated in the proposed rule at 60 FR 35308, 35310, July 6, 1995) that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

### Paperwork Reduction Act

The collection of information requirements in this regulation have been approved by the Office of Management and Budget under control number 1212-0049. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Responses to this collection of information are mandatory. (See ERISA sections 4002(b)(3) and 4010.) The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. Confidentiality of information submitted is provided for in § 2628.12 of the regulation. (See ERISA section 4010(c).)

The PBGC estimates that the average annual burden for this collection of information will be 13.2 hours and \$24,315 for each of approximately 100 controlled groups. Comments concerning the accuracy of this burden estimate and any suggestions for reducing the burden of this collection of information should be submitted to the PBGC's Office of General Counsel, 1200 K Street, NW, Suite 340, Washington, DC 20005-4026.

### List of Subjects in 29 CFR Part 2628

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

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

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

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

**§ 2628.1 Purpose and scope.**

(a) *Purpose.* This part prescribes the requirements for annual filings with the PBGC under section 4010 of the Act.

(b) *Scope.* This part applies to filers for any information year ending on or after December 31, 1995.

**§ 2628.2 Definitions.**

For purposes of this part—

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

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

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

(d) *Controlled group* means, with respect to any person, a group consisting of that person and all other persons under common control with that person, determined under part 2612 of this chapter.

(e) *Exempt entity* means a person who does not have to file information and about whom information does not have to be filed, as described in § 2628.4(d) of this part.

(f) *Exempt plan* means a plan about which actuarial information does not have to be filed, as described in § 2628.8(c) of this part.

(g) *Fair market value of the plan's assets* means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

(h) *Filer* means a person who is required to file reports, as described in § 2628.4 of this part.

(i) *Fiscal year* means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

(j) *Information year* means the year determined under § 2628.5 of this part.

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

(l) *Plan* means a single-employer plan, as defined in section 4001(a)(15) of the Act, to which Title IV of the Act applies.

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

**§ 2628.3 Filing requirement.**

(a) *In general.* Except as provided in § 2628.8(c) (relating to exempt plans) and except where waivers have been

granted under § 2628.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 2628.10, all information specified in § 2628.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 2628.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

**§ 2628.4 Filers.**

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) the aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed \$50 million (disregarding those plans with no unfunded vested benefits);

(2) any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of the Act or section 412(n)(1)(A) and (B) of the Code have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of the Act or section 412(d) of the Code totaling in excess of \$1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.*

(1) *General.* Except as provided in paragraph (b)(2) of this section, for purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of the Act and § 2610.23 of this chapter (without reference to the exemptions and special rules under § 2610.24).

(2) *Optional assumptions.* Prior to the first information year in which the

mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of the Act apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 2610.23(c) of this chapter) all of the following assumptions:

(i) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) the fair market value of the plan's assets; and

(iii) the mortality tables described in section 302(d)(7)(C)(ii)(I) of the Act or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment to the mortality tables used to value benefits to be paid as annuities in trusted plans under part 2619 of this chapter, those amended mortality tables.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) a credit balance exists in the funding standard account (described in section 302(b) of the Act and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) a waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) no portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of the Act or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) is not a contributing sponsor of a plan (other than an exempt plan);

(2) has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's annual operating income for the

fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

#### § 2628.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 2628.4), what information a filer must submit (§§ 2628.6–2628.9), whether a plan is an exempt plan (§ 2628.8(c)), and the due date for submitting the information (§ 2628.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years.*

(1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 1996, and filer B's financial information with respect to its fiscal year ending September 30, 1996, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

#### § 2628.6 Information to be filed.

(a) *General.* A filer must submit the information specified in § 2628.7 (identifying information), § 2628.8 (plan actuarial information) and § 2628.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group.

(b) *Additional information.* By written notification, the PBGC may require any

filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year. The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

#### § 2628.7 Identifying information.

(a) *Filers.* Each filer is required to provide the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) the name, address, and telephone number of each member of the controlled group and the legal relationships of each (for example, parent, subsidiary); and

(2) the nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to each member (or if there is no EIN for a member, an explanation).

(b) *Plans.* Each filer is required to provide the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) the name of each plan;

(2) the EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each plan (or if there is no EIN or PN for a plan, an explanation); and

(3) if the EIN or PN of a plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation.

#### § 2628.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide the following actuarial information—

(1) the fair market value of the plan's assets;

(2) the value of the plan's benefit liabilities (determined in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(3) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of the Act or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of the Act or section 412(b)(3)(A) of the Code),

(ii) the itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) the minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) the actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of the Act or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change), and

(v) a summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation, along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors; and

(4) a written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR § 301.6059-1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(3) of this section is not available by the date specified in § 2628.10(a), a filer may satisfy the requirement to provide such information by—

(1) including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 2628.10(b) of this part, and

(2) filing such information (along with a certification by an enrolled actuary under paragraph (a)(4) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has

benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of the Act or section 412 of the Code; and

(2) has no minimum funding waivers outstanding (as described in § 2628.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Determination of benefit liabilities.* The value of a plan's benefit liabilities (within the meaning of section 4001(a)(16) of the Act) at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data.*

(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trustee plans terminating at the end of the plan year (as prescribed in part 2619, subpart C, of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of the Act or section 412(l) of the Code.

#### § 2628.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide the following financial information for each controlled group member (other than an exempt entity)—

(1) audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) if audited financial statements are not available by the date specified in § 2628.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) if neither audited nor unaudited financial statements are available by the date specified in § 2628.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) the audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 2628.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) for each controlled group member included in the consolidated financial statements that is a contributing sponsor of a plan (other than an exempt plan), the contributing sponsor's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where

the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (e.g., joint ventures) or are exempt entities.

#### § 2628.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 2628.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 2628.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a-5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) the postmark was made by the United States Postal Service; and

(ii) the document was mailed postage prepaid, properly addressed to the PBGC; or

(2) if the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be

included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

**§ 2628.11 Waivers and Extensions.**

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 2628.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 2628.10(c) no later than 15 days before the applicable date specified in § 2628.10 of this part, and must state the facts and circumstances on which the request is based.

**§ 2628.12 Confidentiality of information submitted.**

In accordance with § 2603.15(b) of this chapter and section 4010(c) of the Act, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

**§ 2628.13 Penalties.**

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of the Act against the filer and each member of the filer's controlled group (other than an exempt entity) of up to \$1,000 a day for each day that the failure continues. The PBGC may also

pursue other equitable or legal remedies available to it under the law.

**§ 2628.14 OMB control number.**

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB Control Number 1212-0049.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Issued in Washington, DC, this 18th day of December 1995.

Robert B. Reich,

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

James J. Keightley,

*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

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