

Frequency: On occasion.

Affected Public: Business or other for-profit; Farms; Non-profit institutions; Small businesses or organizations.

Number or respondents: 6,349.

Estimated Time Per Respondent: 0.25 hours.

Total Estimated Cost: \$47,610.

Total Burden Hours: 1,587.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: March 6, 1997.

Joseph DuBois,

Director, Division of Data Analysis, OSHA
Office of Statistics.

[FR Doc. 97-6150 Filed 3-12-97; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

RIN 1210 AA57

Notice and Request for Comments on Annual Reporting Enforcement Policy

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

ACTION: Notice and request for comments.

SUMMARY: The purpose of this notice is to invite public comment on the Department of Labor's adoption of an annual reporting enforcement policy pursuant to which the Department would not reject the annual report of a multiemployer welfare benefit plan solely because the accountant's opinion accompanying the report is "qualified" or "adverse" due to a failure to account and report for post-retirement benefit obligations in accordance with the financial statement disclosure requirements of the American Institute of Certified Public Accountants (AICPA) Statement of Position 92-6 (SOP 92-6).

DATES: Written comments should be received on or before May 12, 1997 to be assured of consideration.

ADDRESSES: Written comments should be directed to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Reporting Enforcement Policy. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N-5638, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington D.C. 20210, (202) 219-8515 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

In general, the administrator of an employee benefit plan with 100 or more participants at the beginning of a plan year is required under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Department's regulations issued thereunder, to file a Form 5500 and to include as part of that report the opinion of an independent qualified public accountant.¹ The requirements governing the content of the opinion and report of the independent qualified public accountant are set forth in ERISA section 103(a)(3)(A) and 29 CFR 2520.103-1(b)(5).

ERISA section 104(a)(4) permits the Department to reject an annual report if it determines that there is a material qualification by an accountant contained in the opinion required to be submitted pursuant to section 103(a)(3)(A). If the Department rejects a filing under section 104(a)(4), and the administrator fails to submit a satisfactory filing within 45 days, the Department may, among other things, assess a civil penalty of up to a \$1,000 a day against the administrator for failing or refusing to file an annual report.²

The Department has received a number of inquiries from multiemployer plan administrators, trustees, benefit consultants, and accountants concerning whether a Form 5500 filed by an administrator of a multiemployer plan³ that provides for post-retirement welfare benefits would be rejected by the Department solely because the independent qualified public accountant's opinion accompanying such report is "qualified" or "adverse" due to a failure to account and report for post-retirement welfare benefit obligations in accordance with the financial statement disclosure

requirements of SOP 92-6.⁴ Post-retirement welfare benefits would include, for example, health and medical benefits for eligible retirees provided under a welfare benefit plan. In general, compliance with SOP 92-6 is required for financial statements of employee welfare benefit plans to be prepared in accordance with generally accepted accounting principles (GAAP). Among other things, SOP 92-6 amends the welfare plan financial statement disclosure requirements in the AICPA's Audit and Accounting Guide, "Audits of Employee Benefit Plans," to require welfare plans to account for and report post-retirement benefit obligations.⁵

The inquiries from multiemployer plan representatives generally questioned the usefulness of the post-retirement benefit obligation disclosure required under SOP 92-6 to multiemployer plan trustees or participants and beneficiaries. The inquiries also indicated that accounting and reporting for post-retirement obligations in accordance with the financial statement disclosure requirements of SOP 92-6 would result in substantial increases in both administrative burdens and costs to affected multiemployer plans.

The Department is considering whether the proposed annual reporting enforcement policy, as described below, should be adopted. In view of the fact that the AICPA made the SOP 92-6 guidelines applicable to multiemployer plans for plan years beginning after December 15, 1995, and the fact that the Department heretofore had not provided guidance on the issue, the Department decided that while this proposal is pending it would not reject annual reports of multiemployer plans filed for the 1996 and 1997 plan years solely because the accountant's opinion accompanying such report is "qualified" or "adverse" due to a failure to account and report for post-retirement welfare benefit obligations in accordance with SOP 92-6.

B. Proposed Annual Reporting Enforcement Policy

Pursuant to section 103(a)(3)(A), the independent qualified public accountant engaged on behalf of

¹ See ERISA §§ 101(b)(4) and 103, and 29 CFR 2520.103-1.

² See ERISA §§ 104(a)(5) and 502(c)(2), and 29 CFR 2560.502c-2.

³ ERISA § 3(37)(A) defines "multiemployer plan" to mean a "plan—(i) to which more than one employer is required to contribute, (ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (iii) which satisfies such other requirements as the Secretary [of Labor] may prescribe by regulation."

⁴ SOP 92-6, "Accounting and Reporting by Health and Welfare Benefit Plans", was issued by the AICPA on August 3, 1992. SOP 92-6 is effective for audits of financial statements of single employer plans with more than 500 participants for plan years beginning after December 15, 1992 and for single employer plans with no more than 500 participants for plan years beginning after December 15, 1994. SOP 92-6 is effective for audits of financial statements of multiemployer plans for plan years beginning after December 15, 1995.

⁵ See paragraphs 36-49 of SOP 92-6.

participants and beneficiaries is required to conduct "an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules * * * are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year." The Department has taken the position that section 103(a)(3)(A) does not require plans to maintain their statements, books and records in accordance with GAAP.⁶ However, for purposes of compliance with ERISA's annual reporting requirements, the notes to the financial statements must describe, among other things, the accounting principles and practices reflected in the financial statements and, if applicable, variances from GAAP.⁷ Accordingly, an accountant's opinion that notes variances from GAAP would not for that reason alone be unacceptable to the Department.

With regard to accounting and reporting for post-retirement welfare benefit obligations in accordance with the financial statement disclosure requirements of SOP 92-6, in particular, the Department notes that there is nothing in Title I of ERISA, the Department's regulations issued thereunder, or the Form 5500, including instructions thereto, that specifically requires an accounting or reporting by welfare benefit plans for post-retirement welfare benefit obligations.⁸ The Department also notes that, unlike pension benefit plans, ERISA does not impose minimum funding requirements on welfare benefit plans.

In view of the foregoing, the Department is proposing to adopt an annual reporting enforcement policy pursuant to which the Department will not reject the Form 5500 Annual Return/Report of a multiemployer plan, within the meaning of ERISA section 3(37), solely because the accountant's opinion accompanying such report is "qualified" or "adverse" due to a failure to account and report for post-retirement welfare benefit obligations in accordance with the financial statement disclosure requirements of SOP 92-6.

Such variance with GAAP, however, would, in accordance with 29 CFR 2520.103-(b)(3), be required to be set forth in the notes to the financial statements included as part of the Annual Return/Report.

This proposed enforcement policy would extend only to multiemployer welfare plans subject to the financial statement disclosure requirements of SOP 92-6 because only multiemployer plans formally requested relief citing a substantial increase in their administrative burdens and costs that would result from being forced to comply with SOP 92-6. The enforcement policy, therefore, if adopted as proposed, will treat multiemployer plans differently than single employer plans. The Department is interested in receiving comments on this issue.

While the Department is proposing not to reject Annual Return/Reports of multiemployer plans solely because of a failure to account and report for post-retirement welfare benefit obligations in accordance with the financial statement disclosure requirements of SOP 92-6, the Department nonetheless believes that administrators of such plans must determine, taking into account their particular plan, benefit commitments thereunder, and compliance cost, to what extent evaluation of post-retirement welfare benefit obligations may provide information necessary to the discharge of the plan fiduciaries' duties under ERISA.

This enforcement policy would, on adoption, remain in effect until amended or revoked by a document published in the Federal Register.

C. Public Comment

In considering whether to adopt the above described proposed annual reporting enforcement policy, the Department is inviting interested persons to submit comments, data, information, and views that they believe may be relevant to the Department's determination to implement the enforcement policy. The Department specifically invites interested persons to provide comments, data, information and views concerning the following:

1. Whether, and to what extent, accounting and reporting of post-retirement welfare benefit obligations in accordance with SOP 92-6 would produce useful information for fiduciaries, participants and beneficiaries of affected plans that would be unavailable if the proposed policy were adopted. Comments should specify how the SOP 92-6 information would be either useful or not useful to

satisfy any responsibility or exercise any right under ERISA or the plan.

2. How the proposed policy, if adopted, would affect the quality of accountant's examinations, required under ERISA section 103(a)(3)(A), of multiemployer plans' financial statements, books and records.

3. Estimates of any increased administrative, information collection, and recordkeeping costs or burden hours for multiemployer plans attributable to compliance with SOP 92-6 that would be avoided if the proposed enforcement policy is adopted. Cost and burden hour estimates should be specific and distinguish between initial/start-up costs or burdens and any recurring annual costs or burdens. Estimates should also include a description of the administrative, information collection, and recordkeeping services or activities. Variables affecting the estimates, such as size of the plan, demographic characteristics, existing recordkeeping systems, etc., should be noted.

4. Estimates of any increased accounting and actuarial costs for multiemployer welfare benefit plans attributable to compliance with SOP 92-6 that would be avoided if the proposed enforcement policy is adopted. Cost estimates should be specific and distinguish between initial/start-up costs and any recurring annual costs. Estimates should also include a description of the accounting and actuarial services or activities. Variables affecting the estimates, such as size of the plan, demographic characteristics, existing recordkeeping systems, etc., should be noted.

5. Whether availability of the proposed enforcement policy should be conditioned on the multiemployer welfare benefit plan including an "Additional Explanation" section in its summary annual report pursuant to 29 CFR 2520.104b-10(d)(2) explaining that the accountant's opinion accompanying its annual report is "qualified" or "adverse" due to a failure to account and report for post-retirement welfare benefit obligations in accordance with the financial statement disclosure requirements of SOP 92-6.

6. The Department notes that the proposed enforcement policy extends only to multiemployer plans, and, therefore, if adopted as proposed, will treat multiemployer plans differently than single employer plans. We request comments on this issue.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), it must be determined whether a departmental

⁶See Advisory Opinion No. 84-45A (November 16, 1984).

⁷See 29 CFR 2520.103-1(b)(3).

⁸For annual reporting purposes, "benefit claims" and other payables, reported as plan liabilities on the Form 5500, are generally limited, in the case of noncash basis welfare plans, to amounts processed and approved for payment by the plan. See items 31g-31k of the 1996 Form 5500. The enforcement policy described in this Release does not change these requirements.

action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the 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.

Pursuant to the terms of the Executive Order, the proposed action that is the subject of this notice has been determined to be "significant" under category (4), *supra*, and, therefore, has been reviewed by OMB.

Paperwork Reduction Act

The notice issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it contains no "collection of information" as defined in 44 U.S.C. 3502(3).

Signed at Washington D.C., this 6th day of March 1997.

Olena Berg,

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

[FR Doc. 97-6153 Filed 3-12-97; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180 day arbitration period for the adjustment of the royalty

rates for the satellite carrier compulsory license, as required by the regulations governing this proceeding.

EFFECTIVE DATE: March 13, 1997.

ADDRESSES: All hearings and meetings for the rate adjustment of the royalty fees for the satellite compulsory license shall take place in the James Madison Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or Tanya Sandros, Attorney Advisor, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the Federal Register at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and places of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills those requirements of § 251.11(b) for the proceeding to adjust the royalty fees for the satellite compulsory license.

By notice dated June 11, 1996, the Library announced the precontroversy discovery period for this docket and requested interested parties to file Notices of Intent to Participate. 61 FR 29573 (June 11, 1996). Subsequently, the Library adjusted the schedule, and informed the participating parties that the 180-day arbitration period would begin on March 3, 1997. Order in Docket No. 96-3 CARP SRA (October 29, 1996). On February 28, 1997, the Office published a notice announcing the initiation of the 180 day period for this proceeding. 62 FR 9212 (February 28, 1997). The 180 day period commenced on March 3, 1997, and will end on August 29, 1997.

On March 4, 1997, the first Tuesday immediately following the initiation of the proceeding, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule for this proceeding. At that meeting, the parties and the arbitrators agreed to the following schedule:

Presentation of direct cases	Dates
Copyright Owners	March 13-March 14, 1997. March 17-March 20, 1997. March 24-March 25, 1997.
Satellite Carriers	April 7-April 10, 1997.
ASkyB	April 15-April 17, 1997.
Close of 180 day period.	August 29, 1997.

The regulations require that the Copyright Office publish the original schedule for the CARP proceeding in the Federal Register at least seven calendar days in advance of the first meeting. 37 CFR 251.11(b). Pursuant to 37 CFR 251.11(d), however, the arbitrators voted to publish the schedule on shorter notice than the required seven days in order to maximize the allotted time to hear the evidence and write their report. The results of the vote on the question, whether the requirement for a seven calendar notice should be waived, are:

The Hon. Lewis Hall Griffith,

Chairperson—Yes

The Hon. John W. Cooley—Yes

The Hon. Jeffrey S. Gulin—Yes

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: March 7, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97-6328 Filed 3-12-97; 8:45 am]

BILLING CODE 1410-33-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35