

ordinary course of their business. Certain documents, such as affidavits, would likely be required to be prepared specifically for purposes of the petition. It is assumed that documents will most often be assembled and drafted by attorneys, although this is not required by the express terms of the procedure.

(5) *Duplication*. No federal rules have been identified that duplicate, overlap, or conflict with the final rule.

(6) *Alternatives*. The regulations are based on the consensus report of the Committee. Recognizing that guidance was needed in clarifying collective bargaining exceptions to the MEWA regulation, in 1995, the Department had published a Notice of Proposed Rulemaking on Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements in the **Federal Register** (60 FR 39209). Under the terms of the 1995 NPRM, it would have been within the authority of state insurance regulators to identify and regulate MEWAs operating in their jurisdictions. The 1995 proposal did not establish a method for obtaining individual findings by the Department.

The Department received numerous comments on the NPRM expressing concerns about plans' abilities to meet the standards set forth in the NPRM. Commenters also objected to granting authority to state regulators for determining whether a particular agreement was a collective bargaining agreement. Commenters strongly preferred that determination of whether a plan was established under or pursuant to a collective bargaining agreement lie with a federal agency and not with individual states.

Based on the comments received, the Department turned to negotiated rulemaking as an appropriate method of developing a revised Notice of Proposed Rulemaking. In September 1998, the Secretary established the Committee under the NRA. The Committee membership was chosen from the organizations that submitted comments on the Department's August 1995 NPRM and from the petitions and nominations for membership received in response to a Department Notice of Intent. These regulations are based on the Committee's consensus on the need for an individualized administrative proceeding in limited circumstances for determining the legal status of an entity. Based on the fact that the Committee represented a cross section of the state, federal, association, and private sector insurance organizations concerned with these issues, the Department believes that, as an alternative to the 1995 NPRM, these regulations accomplish the stated objectives of the Secretary and

will have a beneficial effect on MEWAs, state insurance regulators, small employers who offer group health coverage, and plan participants. No other significant alternatives that would minimize the economic impact on small entities have been identified.

Participating in an administrative hearing to determine legal status is a voluntary undertaking on the part of a plan or arrangement. It would be inappropriate to create an exemption for small entities under the regulation because small entities are as much in need of clarification of their legal status as are larger entities.

#### **D. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), the Department submitted the information collection request (ICR) included in the Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements under section 3(40)(A) of ERISA to the Office of Management and Budget (OMB) for review and clearance at the time the NPRM was published in the **Federal Register** (65 FR 64498). A request for comments on the ICR was included in the NPRM. No comments were received about the ICR, and no changes have been made to the ICR in connection with this Notice of Final Rulemaking. OMB subsequently approved the ICR under control number 1210-0119. The approval will expire on January 31, 2004.

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

*Title*: Petition for Finding under section 3(40) of ERISA.

*OMB Number*: 1210-0119.

*Affected Public*: Business or other for-profit; not-for-profit institutions.

*Respondents*: 45.

*Responses*: 45.

*Average Time Per Response*: 32 hours.

*Estimated Total Burden Hours*: 1.

*Estimated Total Burden Cost (Operating and Maintenance)*: \$104,100.

#### **E. Small Business Regulatory Enforcement Fairness Act**

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual

industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### **F. Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private sector, which may impose an annual burden of \$100 million.

#### **G. Executive Order 13132**

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, Aug. 10, 1999) requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has Federalism implications because it sets forth standards and procedures for an ALJ hearing for determining whether certain entities may be regulated under certain state laws or whether such state laws are preempted with respect to such entities. The state laws at issue are those that regulate the business of insurance. A member of the National Association of Insurance Commissioners (NAIC), representing the interest of state governments in the regulation of insurance, participated in the negotiations throughout the negotiated rulemaking process that provided the basis for this regulation.

In response to comments from the public about the proposed rule, the NAIC raised a concern that the process by which the Department issues ALJ determinations regarding the collectively bargained status of entities should move forward as quickly as possible and not result in a stay of state enforcement proceedings against MEWAs. The final regulation specifically states that the proceedings shall be conducted as expeditiously as possible and that the parties shall make every effort to avoid delay at each stage of the proceeding. The companion