

the upcoming fiscal period indicates that the grower price for the 2000–2001 fiscal period could range between \$4.10 and \$19.65 per 4/5-bushel carton of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue could range between .03 and .13 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the citrus production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000–2001 fiscal period begins on August 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this

action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

##### § 905.235 Assessment rate.

On and after August 1, 2000, an assessment rate of \$0.0055 per 4/5-bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: June 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–16991 Filed 7–5–00; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

#### 26 CFR Part 1

[REG–107872–99]

RIN 1545–AX18

#### Coordination of Sections 755 and 1060 Relating to Allocation of Basis Adjustments Among Partnership Assets; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the allocation of basis adjustments among partnership assets under section 755.

**DATES:** The public hearing originally scheduled for Wednesday, July 12, 2000, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel

(Corporate), (202) 622–7190 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on Wednesday, April 5, 2000, (65 FR 17829), announced that a public hearing was scheduled for Wednesday, July 12, 2000, at 10 a.m., in room 2716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 755 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Wednesday, July 5, 2000. The outlines of topics to be addressed at the hearing were due on Wednesday, June 21, 2000.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, June 27, 2000, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, July 12, 2000, is cancelled.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00–16972 Filed 7–5–00; 8:45 am]

**BILLING CODE 4830–01–U**

#### PENSION BENEFIT GUARANTY CORPORATION

#### 29 CFR Parts 4022 and 4044

RIN 1212–AA96

#### Title IV Aspects of Cash Balance Plans With Variable Indices

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Request for public comment.

**SUMMARY:** Many cash balance plans use variable indices to determine future retirement benefits. If such a plan terminates in a distress or involuntary termination under Title IV of ERISA, the PBGC must make assumptions—as of the plan's termination date—about the future performance of the variable index. The PBGC is soliciting public comment on what assumptions it should make about that future performance.

**DATES:** Comments must be received on or before September 22, 2000.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation,

1200 K Street, NW., Washington, DC 20005-4026, or delivered to suite 340 at the above address. Comments also may be sent by internet e-mail to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TTD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**Overview**

The PBGC administers the termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under that program, the PBGC guarantees, subject to certain limits, the benefits payable by covered defined benefit plans.

Many of the PBGC's regulations were written in the early years of the termination insurance program. Since that time—particularly in recent years—defined benefit plans have undergone significant changes in design. One of the more significant changes for the termination insurance program is the emergence of cash balance and other hybrid plans. These new plan designs raise novel issues for the PBGC when it performs valuations and determines benefit entitlements. This notice focuses on how the PBGC should perform these tasks in the case of a cash balance plan that uses a variable index to determine participants' benefits.

**Background**

A brief explanation of the PBGC's existing valuation and payment rules and of certain aspects of cash balance plans may be helpful to an understanding of the issues raised in this notice.

*Valuation and Payment Rules for Traditional Plans*

When a defined benefit plan terminates in a distress or involuntary termination, the PBGC allocates the plan's assets among the plan's participants and beneficiaries based on the priority categories established under section 4044 of ERISA. To do so, the PBGC must value the plan's benefit liabilities and the plan's assets as of the plan's termination date. The valuation affects the amount of the PBGC's

employer liability claim for plan underfunding. It also affects the extent to which any nonguaranteed portion of a participant's accrued benefit is funded. (Nonguaranteed benefits may be funded either by plan assets under ERISA section 4044 or by PBGC recoveries on its employer liability claims under ERISA section 4022(c).) The PBGC performs this valuation by making assumptions as to the form of the benefit, when payments will begin (e.g., at early or normal retirement age), interest, mortality, etc.

In the case of a traditional defined benefit plan, when the PBGC completes its valuation it generally can determine, and tell the participant, the amount of the annuity benefit payable (at a specified age, and in a specified form) under the termination insurance program. This is so even if retirement is many years away. (The actual amount of the annuity benefit may vary depending on factors such as when the participant chooses to start receiving the benefit and whether the benefit is paid in a "joint-and-survivor" form.) Similarly, if the PBGC pays a benefit under a traditional defined benefit plan in lump-sum form (generally only when it cashes out a de minimis benefit of \$5,000 or less), it can determine its lump-sum value (i.e., the present value, as of the plan's termination date, of the annuity benefit payable by the PBGC) as soon as it completes its valuation. The PBGC cannot make these determinations as easily in many cash balance plans.

*Cash Balance Plans*

A cash balance plan is a defined benefit plan that defines a participant's retirement benefit by reference to the amount of a hypothetical account balance. The hypothetical account balance is credited each year with a pay credit and an interest credit, both of which must be specified in the plan. A cash balance plan also must specify the annuity conversion factor (e.g., a factor based on specified interest and mortality assumptions) that it will use to convert the hypothetical account balance to an immediate annuity benefit. Participants in ongoing cash balance plans who separate from employment generally have the right to receive their benefits in annuity form, although they typically choose (with spousal consent) to receive their benefits in lump-sum form. In most cases, the plan defines the lump-sum amount as equal to the hypothetical account balance.

In a cash balance plan, the interest credit may be fixed (e.g., 5%) or based on a variable index (e.g., the yield on 30-year Treasury securities). (Similarly,

while the annuity conversion factor may be fixed, it may also vary over time, either because the interest rate is tied to a variable index or because the mortality assumption (e.g., the "applicable mortality table" under IRC § 417(e)(3)) may change.) If the plan does not use a fixed interest credit and would not qualify under IRS Notice 96-8 (1996-1 C.B. 359) as a "safe-harbor" plan that may pay out the hypothetical account balance as the present value of the participant's benefit, it must include a method for fixing the value of the indices in order to calculate a participant's accrued benefit (see section III.B.1 of Notice 96-8).

When a cash balance plan terminates in a distress or involuntary termination, the PBGC can perform its plan valuation and make its benefit determinations in the same way it does for a traditional defined benefit plan only if the plan's interest credit and annuity conversion factors are fixed or if the plan provides a method for fixing them. In the absence of fixed factors or a plan method for fixing them, the PBGC must determine how to fix the factors.

Although the discussion in this notice focuses on interest credits that are based on variable indices, similar issues arise with respect to annuity conversion factors that may vary over time.

*Future Annuity Payments—Following the Variable Index*

A variable index presents fewer problems when the PBGC is determining the annuity amount to actually pay a participant at the time the participant begins to receive benefits. The PBGC can—and anticipates that it will—track the future (actual) performance of a variable index so that it will know, at the time a participant begins to receive benefits, the amount of the participant's annuity benefit under the plan and the extent to which that benefit is guaranteed. (However, in the case of a participant whose benefit is not fully guaranteed, how the PBGC fixes the variable index may affect the extent to which there is funding for the nonguaranteed portion of the benefit, as discussed under Fixing the Variable Index, below.)

Although tracking the actual performance of a variable index over time is consistent with plan provisions, it will prevent the PBGC from being able to tell participants before retirement exactly what they will receive at retirement (just as it is impossible for the plan administrator of an ongoing cash balance that uses a variable index to provide this information to participants in advance). The PBGC is considering what types of estimates it

should give when communicating with participants and how often to update these estimates.

### Fixing the Variable Index

#### *Section 4044 Valuation*

Tracking the actual performance of a variable index over time is not an option for the PBGC when it performs its plan valuation under ERISA section 4044. This is because the PBGC must perform this valuation as of the plan's termination date and thus cannot take into account the actual performance of the variable index after that date. The PBGC values each participant's plan benefit by first determining the annuity benefit payable at retirement and then determining the present value of that future annuity benefit as of the plan's termination date. Thus, the PBGC must fix the variable index (*i.e.*, make an assumption about the future performance of the variable index) as of the plan's termination date to be able to determine, as of that date, what a participant's annuity benefit will be at a future retirement date.

#### *Future Annuity Payments—Funding of Nonguaranteed Benefits*

The way in which the PBGC fixes the variable index will not affect the amount of a participant's annuity benefit under the plan or the extent to which that benefit is guaranteed. However, it can affect the section 4044 valuation, which is performed as of the plan's termination date. That valuation, in turn, can affect the extent to which any nonguaranteed portion of the participant's benefit is funded by plan assets or by PBGC recoveries on its employer liability claims.

#### *Lump Sums*

The PBGC also must fix the future performance of a variable index to determine the amounts of its (generally *de minimis*) lump-sum payments. This is so because, under the PBGC's traditional methodology for calculating lump sum amounts, it must know the amount of the participant's future retirement benefit in order to determine the lump sum value (based on PBGC assumptions and methods) of that benefit as of the plan's termination date.

The need to fix the variable index would not disappear even if the PBGC were to depart from its traditional methodology for determining lump sum amounts and were instead to base its lump sum payments in "safe-harbor" cash balance plans on the amount of the hypothetical account balance. This is because the PBGC can pay the hypothetical account balance only to the

extent it is payable under Title IV of ERISA, *i.e.*, guaranteed (under ERISA section 4022(a) and (b)) or funded by plan assets (under ERISA section 4044) or by PBGC recoveries on its employer liability claims (under ERISA section 4022(c))—determinations that the PBGC must make as of the plan's termination date. Thus, the PBGC will need to fix the variable index to determine the extent to which the lump sum is payable.

#### *Possible Methods for Fixing the Variable Index*

The PBGC can fix the future performance of a variable index in a number of ways—for example, by using a standardized PBGC value that will apply to all plans that terminate on a given date, by making a "best estimate" determination for each plan termination based on generally accepted actuarial principles and practices, by using the index as it stood on the plan's termination date (*i.e.*, the "spot rate"), or by using some "historical average" of the index.

Each approach would present different issues. Using a standardized PBGC value could lead to results that would diverge significantly from what one would expect based on the variable index a plan chose. The "best estimate" approach might leave too much discretion with the PBGC. Although the "spot rate" approach could be viewed as consistent with the use of the termination date as the date to determine various rights and obligations under the termination insurance program, there would be an issue as to whether this was the best approach where the index was at (or near) a historic high or low or where, as in the case of an equity index, the change in the index could be negative. And the "historical average" approach would raise questions as to the period over which the variable index should be averaged and the method of averaging. It also would raise questions as to the data's applicability to the future, particularly where the variable index had existed for only a short time or was volatile (*e.g.*, a stock index).

One option that the PBGC is actively considering, in the common case where a plan uses a variable Treasury index other than the yield on 30-year Treasuries (*e.g.*, the yield on one-year Treasuries), is to combine elements of the "spot rate" and "historical average" approaches by using a "modified spot rate" approach. Under this approach, the PBGC would start with the less volatile spot rate for 30-year Treasuries and adjust it to reflect the historical

difference between the yield on 30-year Treasuries and the variable index used.

### Request for Comments

The PBGC is soliciting comments on the Title IV aspects of cash balance plans. As detailed in this notice, the PBGC is especially interested in comments on how it should make its valuation and payment determinations under a cash balance plan that uses a variable index to determine benefits, and on what benefit estimates it should give participants in such a plan. While the discussion in this notice focuses on cash balance plans that use variable indices to determine interest credits, the PBGC is also interested in comments on how it should perform these tasks for cash balance plans that use annuity conversion factors that may vary and for other plans that may raise similar issues.

### E.O. 12866 Review

The Office of Management and Budget has reviewed this notice under E.O. 12866, Regulatory Planning and Review. However, the PBGC has not yet determined whether there is a need to proceed by rulemaking to address the issues raised in this notice.

Issued in Washington, D.C., this 30th day of June, 2000.

**David M. Strauss,**  
*Executive Director, Pension Benefit Guaranty Corporation.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2000-4A]

### Public Performance of Sound Recordings: Definition of a Service

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Extension of reply comment period.

**SUMMARY:** The Copyright Office of the Library of Congress is extending the period for filing reply comments in the proceeding to consider the merits of a petition filed by the Digital Media Association. The petition seeks a determination that a webcasting service is not deemed to be interactive merely because it offers the consumer some degree of influence over the programming offered by the service.

**DATES:** Written reply comments are due on July 14, 2000.