11B(EZ), and/or BE–11C, is required of each U.S. Reporter that, at the end of the Reporter's fiscal year, had a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each U.S. person having a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. If the U.S. Reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, the bank, including all of its domestic subsidiaries or units, must file on a separate Form BE–11A. The nonbanking U.S. operations not owned by the bank must also file on a Form BE–11A.

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 31 and Part IV. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter).

(A) A BE–11B(LF)(Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $150 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) A BE–11B(SF)(Short Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative), but for which no one of these items was greater than $150 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(C) A BE–11B(EZ) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter that is selected to be reported on this form in lieu of Form BE–11B(LF) or Form BE–11B(SF).

(iii) Form BE–11B(FN) (Report for Foreign Affiliate of Bank U.S. Reporter and Bank Affiliate of Nonbank U.S. Reporter) must be filed for 1) each foreign affiliate (bank and nonbank) of a bank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year and 2) each bank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Form BE–11C (Report for Minority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter) must be filed for each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one nonbank U.S. Reporter, but less than 20 percent by all nonbank U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(v) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) For nonbank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $40 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $40 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(B) For affiliates of bank U.S. Reporters and bank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $250 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $250 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(C) For nonbank foreign affiliates of nonbank U.S. Reporters, for fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(D) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(vi) Notwithstanding paragraph (f)(3)(v) of this section, a Form BE–11B(LF), (SF), (FN), (EZ) or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

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[FR Doc. E7–24362 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–06–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB10

Premium Rates; Payment of Premiums; Flat Premium Rates, Variable-Rate Premium Cap, and Termination Premium; Deficit Reduction Act of 2005; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to amend PBGC's regulations on Premium Rates and Payment of Premiums to implement certain provisions of the Deficit Reduction Act of 2005 (Pub. L. 109–171) and the Pension Protection Act of 2006 (Pub. L. 109–280) that are effective beginning in 2006 or 2007. The

provisions implemented by this rule change the flat premium rate, cap the variable-rate premium in some cases, and create a new ''termination premium'' that is payable in connection with certain distress and involuntary plan terminations. This rule does not address other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums.

DATES: Effective January 16, 2008.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, and section 4007 of ERISA deals with the payment of premiums, including premium due dates, interest and penalties on premiums not timely paid, and persons liable for premiums.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005, Pub. L. 109–171 (DRA 2005). Section 8101 of DRA 2005 amends section 4006 of ERISA. Section 8101(a) changes the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provides for inflation adjustments to the flat rates for future years. Section 8101(b) creates a new ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations that occur after 2005.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Public Law 109–280 (PPA 2006). Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005. Section 405 of PPA 2006 amends section 4006 of ERISA to cap the variable-rate premium for plans of certain small employers beginning in 2007. (PPA 2006 also makes other changes affecting PBGC premiums that are not addressed in this rule.)

On February 20, 2007, PBGC published (at 72 FR 7755) a proposed rule to amend PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) to conform to these requirements of DRA 2005 and PPA 2006 and to clarify how the requirements apply. PBGC received one public comment on the proposed rule. The comment focused on the termination premium and is discussed below.

Flat-Rate Premium

Until the enactment of DRA 2005, the flat-rate premium had remained unchanged for single-employer plans since 1991 and for multiemployer plans since 1989. Section 8101(a) of DRA 2005 amends section 4006(a)(3)(A) of ERISA and adds new subparagraphs (F) and (G) to the end of section 4006(a)(3) of ERISA to raise the flat premium rates for 2006 for both single- and multiemployer plans and to provide for inflation indexing for future years.

Applicability

Before amendment by DRA 2005, section 4006(a)(3)(A) of ERISA provided (in part) that ''* * * the annual premium rate * * * is * * * in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the [per-participant variable-rate premium] under subparagraph (E) for each * * * participant * * *.'' Section 8101(a)(1)(A) of DRA 2005 changes ''$19'' to read ''$30.'' Thus, the amended text of ERISA, read literally, makes it appear that the $30 single-employer flat-rate premium applies to plan years beginning after 1990. However, section 8101(d)(1) of DRA 2005 (which does not amend ERISA) says that this change applies to plan years beginning after December 31, 2005. Accordingly, PBGC considers single-employer flat premium rates for plan years beginning before 2006 to be unaffected by DRA 2005.

Participant Count

Section 8101(a)(2)(A)(ii) of DRA 2005 adds a new clause (iv) to section 4006(a)(3)(A) of ERISA providing that the flat premium rate for a multiemployer plan for a post-2005 plan year is ''$8.00 for each individual who is a participant in such plan during the applicable plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(A)(i) of ERISA.

Flat Premium Rates

This rule amends § 4006.3 of the premium rates regulation to reflect the changes to the flat-rate premium made by section 8101(a) of DRA 2005. Existing paragraphs (a)(1) and (a)(2) of § 4006.3 (setting forth the $19 and $2.60 flat rates) are removed, and a cross-reference to new § 4006.3(c) is provided instead. Paragraph (1) of new § 4006.3(c) provides pre-2006 rates ($19 and $2.60); paragraph (2) provides 2006 rates ($30 and $8); and paragraph (3) provides post-2006 rates (the greater of the preceding year's rate or the inflation-adjusted rate).

Inflation Adjustments

Section 8101(a)(1)(B) and (2)(B) of DRA 2005 add to section 4006(a)(3) of ERISA substantially identical new subparagraphs (F) and (G) providing for inflation adjustments to the $30 and $8 flat rates for plan years beginning after 2006. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2007, it will be the 2005 index that will be compared to the baseline (the 2004 index). However, new subparagraphs (F) and (G) are written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, under new subparagraphs (F) and (G), premium rates are rounded to the nearest whole dollar. PBGC interprets this to mean that if the adjustment formula would produce an unrounded premium rate of some number of dollars plus 50 cents, the premium rate will be rounded up. The inflation adjustment is described in new § 4006.3(d).

Variable-Rate Premium

Section 405 of PPA 2006 amends section 4006(a)(3)(E)(i) of ERISA and adds new subparagraph (H) to the end of section 4006(a)(3) to cap the variable-rate premium for certain plans, effective for plan years beginning after 2006. This rule revises § 4006.3(b) of the premium rates regulation to reflect the new cap.

Plans Covered

Clause (i) of new section 4006(a)(3)(H) of ERISA says that the new variable-rate premium cap applies ''[i]n the case of an employer who has 25 or fewer

employees on the first day of the plan year.'' But clause (ii) of new section 4006(a)(3)(H) of ERISA makes clear that the applicability of the new cap does not necessarily depend on the size of a single employer, but rather depends on the size of a plan's controlled group, that is, the aggregate size of ''all contributing sponsors and their controlled groups.'' (See the definition of ''controlled group'' in § 4001.2 of PBGC's regulation on Terminology (29 CFR Part 4001), which provides that ''[a]ny reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group''). Since a plan maintained by one contributing sponsor may or may not also be maintained by one or more other contributing sponsors that are not in the first sponsor's controlled group, the applicability of the cap must be determined plan by plan, not employer by employer. New § 4006.3(b)(3) describes the plans eligible for the cap.

Meaning of ''Employee''

New section 4006(a)(3)(H) of ERISA does not give guidance as to the meaning of the term ''employee.'' New § 4006.3(b)(4) as added by this rule defines ''employee'' for this purpose by reference to section 410(b)(1) of the Internal Revenue Code, which deals with minimum coverage requirements for qualified plans and requires that employees be counted to evaluate the breadth of coverage of a plan. For this purpose, certain individuals may be counted as ''employees'' although they might not be considered common law employees of the employer—for example, affiliated service group employees (under Code section 414(m)) and leased employees (under Code section 414(n)). PBGC considers this approach appropriate to prevent an employer from qualifying for the cap by artificially lowering its employee count through the use of sophisticated business structuring devices. In addition, in order to ensure that all employees are counted, new § 4006.3(b)(4) provides that the employee count is to be determined without regard to Code section 410(b)(3), (4), and (5), which might be considered to exclude from the count collective bargaining employees, employees not meeting a plan's age and service requirements, and employees in separate lines of business.

Cap Amount

Under new section 4006(a)(3)(H)(i) of ERISA, the per-participant variable-rate premium is capped at ''$5 multiplied by the number of participants in the plan as of the close of the preceding plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(E)(i) of ERISA. This participant count is the same as the count used as a multiplier under section 4006(a)(3)(A)(i) of ERISA for purposes of both the flat- and variable-rate premiums. Thus, an eligible plan's total variable-rate premium is capped at an amount equal to $5 multiplied by the square of the participant count. The cap is described in new § 4006.3 (b)(2), which includes an example of the computation of the cap taken from page 95 of the Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006, Prepared by the Staff of the Joint Committee on Taxation (August 3, 2006) (*http://www.house.gov/jct/x-38–06.pdf*).

Termination Premium

Section 8101(b) of DRA 2005 adds a new paragraph (7) to the end of section 4006(a) of ERISA, creating a new ''termination premium'' that applies only where certain distress and involuntary terminations occur and then only for three years. However, although only section 4006 of ERISA is amended, subparagraph (D) of new paragraph (7) in effect modifies section 4007 of ERISA as well. Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005.

Termination Dates Covered

Section 8101(d)(2)(A) of DRA 2005 (which does not amend ERISA) restricts the new termination premium to ''plans terminated after December 31, 2005.'' (Section 401(b)(1) of PPA 2006 repeals new section 4006(a)(7)(E) of ERISA, added by DRA 2005, which provided that the termination premium would not apply ''with respect to any plan terminated after December 31, 2010.'') This time restriction is reflected in new § 4007.13(a)(1) introductory text.

Section 8101(d)(2)(B) of DRA 2005 further restricts the application of the new termination premium in certain bankruptcy situations. If a plan ''is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),'' the new premium does not apply ''if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.'' Under section 402(g)(2)(B)(ii) of PPA 2006, this limitation does not apply to an ''eligible plan'' under section 402(c)(1) of PPA 2006 (generally a plan of a commercial passenger airline or airline catering service) while a funding election under section 402(a)(1) of PPA 2006 is in effect for the plan. These provisions are in new § 4007.13(a)(2) and (3).

These time restrictions on the applicability of the new premium turn on when a plan is ''terminated.'' PBGC believes that the most natural reading of these provisions is that the date to look to is the termination date under section 4048 of ERISA. Focusing on the section 4048 termination date is also consistent with other provisions of DRA 2005 and implementing regulations discussed below. This interpretation is reflected throughout the termination premium provisions added by this rule.

Types of Terminations Covered

Under new section 4006(a)(7)(A) of ERISA, the termination premium applies where ''there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) [of ERISA] or section 4042 [of ERISA].'' Section 4041(c) of ERISA provides for distress terminations; ERISA section 4042 provides for involuntary terminations.

Under ERISA section 4041(c)(1), a distress termination of a plan may occur only if each contributing sponsor and each member of any contributing sponsor's controlled group meets one of the ''distress tests'' in clauses (i), (ii), and (iii) of section 4041(c)(2)(B). The tests are that the person is the subject of a bankruptcy liquidation proceeding (clause (i)), that the person is the subject of a bankruptcy reorganization proceeding (clause (ii)), or that the person is suffering business hardship (clause (iii)).

Although typically all contributing sponsors and controlled group members meet the same distress test, that is not required for a distress termination under section 4041(c). Thus, while terminations where all contributing sponsors and controlled group members meet the test in clause (i) seem to be excluded from applicability of the termination premium, it is not clear from the statutory language whether the termination premium is to apply to terminations where one or more contributing sponsors and/or controlled group members meet the clause (i) test but others meet the tests in clauses (ii) and/or (iii). Examples of such situations

would be where there are two contributing sponsors, one liquidating and one reorganizing; where the sole contributing sponsor is liquidating but there are controlled group members that are reorganizing; and where the sole contributing sponsor is reorganizing but the controlled group members are liquidating.

The statutory language provides no basis for distinguishing among these examples or others that might be cited. All contributing sponsors and controlled group members are liable for plan underfunding under ERISA section 4062 and (as discussed below) for the termination premium (if it applies), and they must all satisfy one or another distress test under ERISA section 4041(c)(2)(B) for a distress termination to take place. This suggests that all these entities should be considered responsible as a group for the consequences of plan termination and that the fact that one entity among several is liquidating should not shield the others from liability. PBGC thus interprets new section 4006(a)(7)(A) of ERISA as applying the termination premium in any distress termination case where at least one contributing sponsor or controlled group member meets the distress test in either clause (ii) or (iii) of section 4041(c)(2)(B) (i.e., is not liquidating).

New § 4007.13(a)(1)(i) and (ii) deals with the types of terminations covered by the termination premium.

Payers

Section 4007(a) of ERISA places responsibility for paying PBGC premiums on the ''designated payor'' of a plan, and section 4007(e)(1)(A) of ERISA identifies the designated payor of a single-employer plan as the contributing sponsor or plan administrator. However, new section 4006(a)(7)(D)(i)(II) of ERISA, as added by section 8101(b) of DRA 2005, provides that notwithstanding section 4007, the designated payor of the new termination premium is ''the person who is the contributing sponsor as of immediately before the termination date.'' It thus appears that the designated payor is to be identified as of the day before the termination date under section 4048 of ERISA. Similarly, this rule provides for identification of members of the contributing sponsor's controlled group (which are jointly and severally liable for premiums under section 4007(e)(2) of ERISA) as of the same day. These provisions are in new § 4007.13(g).

Participants

Under new section 4006(a)(7)(A) of ERISA, the termination premium is based on the number of ''participants in the plan immediately before the termination date.'' It thus appears that participants are to be counted—for purposes of computing the termination premium—as of the day before the termination date under section 4048 of ERISA (the same day on which the contributing sponsor and controlled group members are determined). Section 4006.6 of the premium rates regulation already includes a definition of ''participant'' (which is used in computing the flat-rate premium), and DRA 2005 suggests no reason to depart from that definition for purposes of the termination premium. New § 4006.7(b) deals with these points.

Due Dates

The termination premium is payable each year for three years. Under new section 4006(a)(7)(D)(i)(I) of ERISA, as added by section 8101(b) of DRA 2005, the new premium is due within 30 days after the beginning of each of three ''applicable 12-month periods,'' which are in turn described in new section 4006(a)(7)(C). New section 4006(a)(7)(C)(i)(I) provides that in general, the first applicable 12-month period starts with ''the first month following the month in which the termination date occurs.'' (From this it is evident that calendar months are meant.) Under new section 4006(a)(7)(C)(i)(II), the second and third applicable 12-month periods are simply the two 12-month periods that follow the first applicable 12-month period. The general rule regarding termination premium due dates is in new § 4007.13(d).

But new section 4006(a)(7)(C)(ii) of ERISA defers the beginning of the first applicable 12-month period (and thus the due dates) in certain bankruptcy reorganization cases. This deferral rule comes into play where ''the requirements of subparagraph (B) [of new section 4006(a)(7) of ERISA] are met in connection with the termination of the plan . . ..'' (Section 401(b)(2) of PPA 2006 corrected an erroneous reference to ''subparagraph (B)(i)(I)'' in new section 4006(a)(7)(C)(ii) of ERISA.) Subparagraph (B) of new section 4006(a)(7)(B) of ERISA defers the applicability of the termination premium for distress or involuntary plan terminations that occur when bankruptcy reorganization proceedings are pending for terminations ''under section 4041(c)(2)(B)(ii) [of ERISA] or under section 4042 [of ERISA].''

Following the same reasoning discussed above regarding new section 4006(a)(7)(A) of ERISA (the general termination premium applicability provision), PBGC concludes that the bankruptcy reorganization deferral provision in new section 4006(a)(7)(B) of ERISA is meant to apply to a distress termination only when at least one contributing sponsor or controlled group member satisfies the bankruptcy reorganization test in section 4041(c)(2)(B)(ii) .

In order for the due date deferral rule in new section 4006(a)(7)(C)(ii) of ERISA to apply, the requirements of subparagraph (B) of section 4006(a)(7) of ERISA must be met ''with respect to 1 or more persons described in such subparagraph'' (that is, one or more persons must be reorganizing in bankruptcy as described in subparagraph (B)). If so, then the first applicable 12-month period begins with ''the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause [sic] in connection with such person.'' (The only clause mentioned in section 4006(a)(7)(C)(ii) of ERISA is clause (i)(I) of section 4006(a)(7)(C), which describes the first applicable 12-month period that applies if the special bankruptcy rule does not. Thus the reference to ''such clause'' appears to be intended to refer to ''such subparagraph''—that is, subparagraph (B)—and PBGC so interprets the reference.)

However, although subparagraph (B) of new section 4006(a)(7) of ERISA describes a case—a bankruptcy case—it does not describe a person. The only person mentioned in subparagraph (B) is ''such person,'' with no cross-reference to another place where the person is described. Nonetheless, it seems clear that the person referred to must be a person that has a relationship to both the plan and the bankruptcy proceeding mentioned in subparagraph (B). Subparagraph (B) contains parenthetical language that is essentially identical to parenthetical language that appears in section 4041(c)(2)(B)(ii) of ERISA (which describes the bankruptcy reorganization test for distress terminations). In section 4041(c)(2)(B)(ii), the words ''such person'' in the parenthetical language refer to a contributing sponsor or member of a contributing sponsor's controlled group. PBGC infers that ''such person'' in new section 4006(a)(7)(B) of ERISA is meant to refer likewise to a contributing sponsor of the terminated plan or member of a contributing sponsor's controlled

group—determined (consistent with the designated payor provision in new section 4007(a)(7)(D)(i)(II)) as of the day before the termination date under section 4048 of ERISA.

This inference is supported by the observation that these same persons—contributing sponsors and controlled group members—are the persons liable for the termination premium. It appears that Congress's intent was to defer the due date for the termination premium until the persons liable to pay it were not in bankruptcy proceedings. Accordingly, where the special bankruptcy rule for due dates applies, it is necessary to identify every contributing sponsor and controlled group member that was involved in bankruptcy reorganization proceedings on the termination date and determine the date when each one left bankruptcy—through dismissal of or discharge in the proceeding—or ceased to exist. (If an entity ceases to exist, its failure to emerge from bankruptcy should not postpone the termination premium due date.) Under new section 4006(a)(7)(C)(ii), the first applicable 12-month period for the termination will then begin with the calendar month that next begins following the last such date.

This bankruptcy due date deferral provision is in new § 4007.13(e).

One due date issue not addressed by the statute is that the agreement or court action establishing a plan's termination date under ERISA section 4048 may occur well after the termination date so established. Where a termination date is thus set as a date in the past, one or more statutory due dates for the termination premium may already have passed when the termination date becomes known. Thus, termination premium payments could be overdue before it was determined that they were owed.

In cases of that kind, PBGC considers it appropriate to provide that where the termination date set is in the past, the first applicable 12-month period does not begin immediately after the month in which the termination date falls, but rather begins immediately after the month in which the termination date is established. Where the special bankruptcy rule for due dates applies, this rule would come into play if the termination date was established after all contributing sponsors and controlled group members were out of bankruptcy reorganization proceedings, and would defer the beginning of the first applicable 12-month period until immediately after the month in which the termination date was established. This provision is in new § 4007.13(f).

Other Bankruptcy Issues

The parenthetical language in new section 4006(a)(7)(B) of ERISA—''(or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought)''—shows that Congress focused on the fact that bankruptcy proceedings can be converted back and forth between liquidation and reorganization proceedings. But neither section 4006(a)(7)(B) nor section 4006(a)(7)(C)(ii) (which describes the special first applicable 12-month period) mentions conversion of a reorganization case to a liquidation case as being sufficient to trigger the beginning of the first applicable 12-month period. It thus appears that if a plan terminates during pendency of a bankruptcy reorganization proceeding, the subsequent conversion of the proceeding to a liquidation proceeding would not keep the first applicable 12-month period from being postponed until the (liquidation) bankruptcy proceeding was dismissed or the contributing sponsor or controlled group member discharged. This could be of significance where there were other persons liable for the termination premium that were not (or were no longer) in bankruptcy.

Section 8101(d)(2)(B) of DRA 2005 (which, as discussed above, excludes from the termination premium terminations that occur during the pendency of bankruptcy reorganization proceedings pursuant to a filing before October 18, 2005) says nothing about the persons involved in such proceedings. Following the reasoning above, PBGC concludes that section 8101(d)(2)(B) is intended to apply only where the subject of a pending bankruptcy proceeding is a contributing sponsor of the terminated plan or a member of a contributing sponsor's controlled group (and that these persons are to be identified as of the day before the termination date under section 4048 of ERISA). Section 8101(d)(2)(B) also does not mention conversion of a bankruptcy case from a liquidation proceeding to a reorganization, as new section 4006(a)(7)(B) of ERISA does. But the language of section 8101(d)(2)(B) is consistent with the interpretation that—like section 4006(a)(7)(B)—it covers bankruptcy proceedings begun as liquidation proceedings and converted to reorganization proceedings before the termination date under section 4048 of ERISA.

Termination Premium Rate

Under new section 4006(a)(7) of ERISA as added by section 8101(b) of DRA 2005, the termination premium is $1,250 per participant per year for three years. But under section 402(g)(2)(B) of PPA 2006 (which does not amend ERISA), the rate is increased from $1,250 to $2,500 where a commercial passenger airline or airline catering service elects funding relief (an extended underfunding amortization period and lenient assumptions for valuing liabilities) for a frozen plan under section 402(a)(1) of PPA 2006, if the plan terminates during the first five years of the funding relief period, unless the Secretary of Labor determines that the termination resulted from extraordinary circumstances such as a terrorist attack or other similar event.

This rule adds a new § 4006.7 to the premium rates regulation providing that the amount of the termination premium with respect to each applicable 12-month period is the premium rate (generally $1,250) times the number of participants, determined as of the day before the termination date, with a cross-reference from § 4006.3 (where the flat and variable premium rates are set forth). New § 4006.7(b) also explains the circumstances in which the termination premium rate is $2,500 rather than $1,250.

Filing Requirements

New § 4007.13(b) makes each contributing sponsor and controlled group member (determined as of the day before the termination date under section 4048 of ERISA) responsible for filing required termination premium information and payments, and (where there is more than one such person) provides that any one can file on behalf of all of them. This provision ensures that, so long as there is at least one person still in existence that is liable for the termination premium, there will be at least one identifiable entity with responsibility to file. This provision is similar to § 4010.3 of PBGC's regulation on Annual Financial and Actuarial Information Reporting (Part 4010 of PBGC's regulations) and § 4043.3(a) of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (Part 4043 of PBGC's regulations). Thus, only a single filing of the premium and required premium information is required, but if it is not timely made, PBGC could seek enforcement against any or all contributing sponsors and controlled group members.

Late Payment Penalty

Section 4007.13(c) provides for a discretionary ''facts-and-circumstances'' penalty for failure to pay the termination premium timely, instead of the automatic 1 percent or 5 percent penalty that applies to late payment of flat- and variable-rate premiums under § 4007.8(a). PBGC wants to preserve flexibility in penalizing failures to pay the new premium in full and on time while it gains experience with the new premium. The penalty is limited to 100 percent of the amount of termination premium not timely filed.

Other Regulatory Provisions

In addition to the provisions discussed above, new § 4007.13 supplements provisions in existing sections of Part 4007 that also apply to the termination premium. This rule also amends several sections in the existing premium payment regulation to eliminate inconsistencies or potential inconsistencies between existing language in those sections and the termination premium provisions.

Public Comment

PBGC received one public comment on the proposed rule. The comment addressed the termination premium. The commenter expressed concern that ''Congress may not have considered the financial ramifications of'' the termination premium. The commenter requested that PBGC ''adopt a facts-and-circumstance approach in collecting the termination premium fee'' and ''consider limiting its recoveries of this termination premium to amounts that each company can afford to pay without jeopardizing its ability to stay in business.''

PBGC has accepted less than full payment on its claims for unfunded benefit liabilities, unpaid funding contributions, and unpaid flat- and variable-rate premiums in circumstances in which, like other creditors, it is forced to compromise those claims. But the language of section 8101(b) of DRA 2005 makes clear that a Congressional purpose in imposing the termination premium was to discourage the termination of underfunded pension plans. Congress has made clear that, when a plan terminates under the circumstances described in new section 4006(a)(7)(B) of ERISA during the pendency of a bankruptcy reorganization, the liability for the termination premium arises after emergence from bankruptcy, indicating a specific intent to avoid a limited recovery of the termination premium in bankruptcy and to ensure a full recovery post-bankruptcy. In light of this Congressional intent, it would be inappropriate for PBGC to adopt a policy of routinely settling termination premium claims for less than the full amount.

PBGC recognizes that plan sponsors may face difficult financial choices because of the termination premium. Accordingly, PBGC encourages sponsors that may be facing termination premium liability to contact PBGC as early as possible to discuss.

Technical Changes

PBGC is taking this opportunity to make some technical changes (unrelated to DRA 2005 or PPA 2006) to its regulations on Premium Rates and Payment of Premiums.

Section 4006.3 of the premium rates regulation refers to basic benefits guaranteed under section 4022(a) of ERISA (which relates only to single-employer plans) and omits mention of section 4022A(a) of ERISA (which relates to multiemployer plans). This rule adds a reference to section 4022A(a).

Section 4007.11(d) of the premium payment regulation states that where proration of the flat- and variable-rate premiums is available under § 4006.5(f) of the premium rates regulation, the un-prorated premium must be paid in full (even if the plan would be entitled to a refund). This provision is anachronistic: PBGC now permits payment of the prorated amount under § 4006.5(f), rather than requiring that a filer pay the un-prorated amount and request a refund. This rule removes the outdated provision.

Section 4007.11(e) of the premium payment regulation permits PBGC to return improper filings and consider them not made. PBGC is not exercising this authority, and the provision is unnecessary; PBGC has authority to assess penalties under ERISA section 4071 for failure to submit material information under the premium payment regulation. This rule removes § 4007.11(e).

Applicability

The regulatory changes made by this rule to implement the provisions of section 8101 of DRA 2005 apply (as section 8101 of DRA 2005 does) to plan years beginning after 2005 and to terminations with termination dates after 2005 (subject to the special rule for bankruptcies filed before October 18, 2005). The regulatory changes made by this rule to implement the provisions of section 405 of PPA 2006 apply (as section 405 of PPA 2006 does) to plan years beginning after 2006.

Compliance With Rulemaking Guidelines

E.O. 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed the rule under Executive Order 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by E.O. 13422), PBGC identifies the following specific problems that warrant this agency action:

- PBGC's regulations do not reflect the statutory changes made by DRA 2005 and PPA 2006 regarding the flat premium rate, the cap on the variable-rate premium, and the termination premium. This problem is significant because, unless the regulations are revised, the public may be confused or misled by the anachronistic regulatory provisions.
- PPA 2006 does not define the term ''employee'' for purposes of the variable-rate premium cap for plans of small employers. This problem is significant because the absence of a definition will likely lead to inconsistent application of the cap rules among filers.
- The termination premium language in DRA 2005 is complex and in some respects unclear. This problem is significant because the complexity and lack of clarity may lead to inconsistent interpretation of the termination premium rules among potential termination premium filers.
- DRA 2005 does not deal with the situation where the termination date is set after the premium due date as described in the statute. This problem is significant because, without a relief rule, potential filers in such situations would be unable to comply with the filing requirements.
- DRA 2005 does not specify the entities responsible for keeping termination premium records or making termination premium filings, and the existing provisions of PBGC's regulations are inapposite. This problem is significant because the absence of a clear assignment of responsibility could impede enforcement.
- Under PBGC's existing regulations, late payment penalties are determined according to a formula. This is a significant problem in the termination premium area because the termination premium requirement is new, neither PBGC nor potential filers are familiar with it, and assessment of late payment penalties according to a mechanical formula could be inappropriate.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. This rule implements statutory changes made by Congress. It provides guidance on how to calculate, pay, and substantiate the premiums prescribed by statute and imposes no significant burden beyond the burden imposed by statute. Furthermore:

- The statutorily imposed increase in the flat-rate premium is at most $11 per participant per year, which does not constitute a significant economic impact where a plan has a small number of participants. Although the flat-rate premium will increase as the number of participants increases, the economic impact of the flat-rate premium relative to the size of the entity will remain fairly constant and will not be significant for a substantial number of entities of any size.
- The statutorily imposed cap on the variable-rate premium will save qualifying plans money. The rule simply interprets the statutory provisions.
- The statutorily imposed termination premium will not affect a substantial number of entities of any size.

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 information collection requirements relating to the flat-rate and variable-rate premiums have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0009, expires April 30, 2008).

The information collection requirements relating to the termination premium have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0064, expires October 31, 2010).

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.

PBGC needs information relating to the termination premium to identify the plan for which a termination premium is paid to PBGC, to verify the determination of the premium, and to identify the persons liable for the premium. PBGC has maximized the practical utility of the information collection and minimized the burden by designing the collection to provide the information PBGC needs to administer and enforce the termination premium requirements without requiring the submission of information that is extraneous to that function. Specifically, the Form T that PBGC has designed for submission of termination premium payments requests:

- The name, Employer Identification Number, and Plan Number for the terminated plan last reported in a PBGC flat- and/or variable-rate premium filing (to identify the plan).
- The date of plan termination (to identify the date as of which participants are counted and contributing sponsors and controlled group members liable for the premium are identified).
- The participant count (on which the termination premium is based).
- The termination premium rate (generally $1,250, but $2,500 for certain airline or airline-related plans).
- The amount of the termination premium owed.
- Whether this is the first, second, or third payment (some data should match from payment to payment, whereas other data may not).
- The payment method (indicating whether PBGC should be looking for a check with the Form T or expecting an electronic funds transfer).
- The name and address of the filer (to identify the filer).
- A list of all persons (other than the filer) that are liable for the termination premium (for enforcement purposes).

Because the number of plan terminations to which the termination premium applies is expected to be relatively small (about 25 per year), the total burden of compliance will be minimal.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, PBGC is amending 29 CFR parts 4006 and 4007 as follows.

PART 4006—PREMIUM RATES

■ 1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 2. In § 4006.3:

■ a. The introductory text is amended by removing the words ''§ 4006.5 (dealing with exemptions and special rules)'' and adding in their place the words ''§ 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans)''; and by removing the words ''section 4022(a)'' and adding in their place the words ''section 4022(a) or section 4022A(a)''.

■ b. Paragraph (a) introductory text is amended by removing the words ''multiplied by—'' and adding in their place the words ''multiplied by the applicable flat premium rate determined under paragraph (c) of this section.''.

■ c. Paragraphs (a)(1) and (a)(2) are removed.

■ d. Paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 4006.3 Premium rate.

* * * * *

(b) *Variable-rate premium.*

(1) *In general.* Subject to the limitation in paragraph (b)(2) of this section, the variable-rate premium is $9 for each $1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

(2) *Cap on variable-rate premium.* If a plan is described in paragraph (b)(3) of this section for the premium payment year, the variable-rate premium does not exceed $5 multiplied by the square of the number of participants in the plan on the last day of the plan year preceding the premium payment year. For example, if the number of participants in the plan on the last day of the plan year preceding the premium payment year is 20, the variable-rate premium does not exceed $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2{,}000$).

(3) *Plans eligible for cap.* A plan is described in this paragraph (b)(3) for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(4) *Meaning of ''employee.''* For purposes of paragraph (b)(3) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

(c) *Applicable flat premium rate.* The applicable flat premium rate is:

(1) For a premium payment year beginning before 2006—

(i) For a single-employer plan, $19, and

(ii) For a multi-employer plan, $2.60.

(2) For a premium payment year beginning in 2006—

(i) For a single-employer plan, $30, and

(ii) For a multi-employer plan, $8.

(3) For a premium payment year beginning after 2006, the greater of—

(i) The applicable flat premium rate for plan years beginning in the calendar year preceding the calendar year in which the premium payment year begins, or

(ii) The adjusted flat rate determined under paragraph (d) of this section for the premium payment year.

(d) *Adjusted flat rate.* The adjusted flat rate for a premium payment year beginning after 2006 is determined by—

(1) Multiplying the applicable flat premium rate for 2006 by the ratio of—

(i) The national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the two calendar years preceding the calendar year in which the premium payment year begins, to

(ii) The national average wage index (as so defined) for 2004; and

(2) Rounding the result to the nearest multiple of $1 (rounding up any unrounded result that equals some whole number of dollars plus 50 cents).

■ 3. New § 4006.7 is added to read as follows:

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section (''termination premium'') applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date under section 4048 of ERISA, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

PART 4007—PAYMENT OF PREMIUMS

■ 4. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 5. Section 4007.3 is amended by removing the words ''The plan administrator'' and adding in their place the words ''Subject to the provisions of § 4007.13, the plan administrator''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ 6. In § 4007.7, paragraph (a) is amended by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ 7. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words ''If any premium payment due'' and adding in their place the words ''Subject to the provisions of § 4007.13, if any premium payment due''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ b. Paragraph (a)(1)(i) is amended by removing the word ''plan's''.

■ c. Paragraph (a)(1) introductory text is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) * * *

(1) *Penalty rate; in general.* Except as provided in paragraph (a)(2) of this section, the penalty rate is—

* * * * *

■ 8. In § 4007.9, paragraph (a) is amended by removing the words ''by a plan administrator''; and by removing the words ''that plan's'' and adding in their place the words ''a plan's''.

■ 9. In § 4007.10:

■ a. Paragraph (a)(1) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper under paragraph (a)(3) of this section''.

■ b. Paragraph (a)(2) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

■ c. Paragraph (b) is amended by removing the words ''for any premium payment year''.

■ d. Paragraph (c)(1) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

■ e. Paragraph (c)(2) is amended by removing the words ''the plan administrator'' and adding in their place the words ''a designated recordkeeper''.

■ f. Paragraph (c)(2)(ii) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper''.

■ g. New paragraph (a)(3) is added to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) * * *

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

* * * * *

■ 10. In § 4007.11:

■ a. Paragraph (a) introductory text is amended by removing the words ''The premium filing due date for small plans'' and adding in their place the words ''For flat-rate and variable-rate premiums, the premium filing due date for small plans''.

■ b. Paragraph (a)(3) introductory text is amended by removing the words ''the premium form or forms and payment or payments for the short plan year shall be filed by'' and adding in their place the words ''the due date or dates for the flat-rate premium and any variable-rate premium for the short plan year are''; and by removing the words ''for the premium forms and payments''.

■ c. Paragraph (c) introductory text is amended by removing the words ''the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before'' and adding in their place the words ''the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan shall be''.

■ d. Paragraph (d) is amended by removing the words ''to file the forms or forms prescribed by this part and to pay any premiums due'' and adding in their place the words ''to make flat-rate and (as applicable) variable-rate premium filings and payments under this part''; and by removing the last sentence of the paragraph.

■ e. Paragraph (e) is removed.

■ 11. In § 4007.12, paragraph (a) is amended by removing the words ''to file

the applicable forms and to submit the premium payment'' and adding in their place the words ''to make flat-rate and variable-rate premium filings and payments under this part''; and by removing the words ''liable for premium payments'' and adding in their place ''liable for flat-rate and variable-rate premium payments''.

■ 12. New § 4007.13 is added to read as follows:

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability*—(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date under section 4048 of ERISA is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date under section 4048 of ERISA, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.* (1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date under section 4048 of ERISA, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date under section 4048 of ERISA, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged in any such proceeding, or

(iii) The person no longer exists.

(f) *Plan termination date in past when set.* If a plan's termination date under section 4048 of ERISA is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for

termination premiums with respect to the plan.

Issued in Washington, DC, this 2nd day of November, 2007.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

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

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E7–24423 Filed 12–14–07; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD00

Indian Oil Valuation

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending the existing regulations regarding valuation, for royalty purposes, of oil produced from Indian leases. These amendments will clarify and update the existing regulations.

DATES: Effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov*. The principal authors of this final rule are John Barder of Minerals Revenue Management, MMS, Department of the Interior, and Geoffrey Heath of the Office of the Solicitor, Department of the Interior, Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS published a proposed rule in the **Federal Register** on February 13, 2006 (71 FR 7453), referred to in this rule as the 2006 Indian Oil Proposed Rule or, simply, the proposed rule, that would amend the regulations governing the valuation for royalty purposes of crude oil produced from Indian leases. Before developing the proposed rule, MMS held a series of eight public meetings in March and June 2005 to consult with Indian tribes and individual Indian mineral owners and to obtain information from interested parties. The intent of the proposed rulemaking was to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian tribal and allotted leases—in particular, the major portion provision. Because of the response from Indian tribes and industry to the proposed rule, MMS plans to convene a negotiated rulemaking committee that will make recommendations regarding the major portion provision in Indian tribal and allotted leases.

For clarification, relevant rulemaking activity is listed below.

Publication date	**Federal Register** reference	Publication title	Referred to in this final rule as
July 7, 2006	71 FR 38545	Reporting Amendments Proposed Rule	2006 Reporting Amendments Proposed Rule.
February 13, 2006	71 FR 7453	Indian Oil Valuation Proposed Rule	2006 Indian Oil Proposed Rule.
March 10, 2005	70 FR 11869	Federal Gas Valuation Final Rule Public Workshop on Proposed Rule—Establishing Oil Value for Royalty Due on Indian Leases.	2005 Federal Gas Final Rule.
February 22, 2005	70 FR 8556	(Proposed Rule of February 12, 1998 (63 FR 7089) and Supplementary Proposed Rule of January 5, 2000 (65 FR 403 are withdrawn).	2005 Establishing Oil Value for Royalty Due on Indian Leases—Workshop.
May 24, 2004 Effective August 1, 2004.	69 FR 29432	Federal Oil Valuation Final Rule Technical Amendment	2004 Federal Oil Final Rule Technical Amendment.
May 5, 2004 Effective August 1, 2004.	69 FR 24959	Federal Oil Valuation Final Rule	2004 Federal Oil Final Rule.
September 28, 2000	65 FR 58237	Establishing Oil Value for Royalty Due on Indian Leases: Proposed Rule.	2000 Indian Oil Proposed Rule.
March 15, 2000 Effective June 1, 2000—Amended 2004.	65 FR 14022	Establishing Oil Value for Royalty Due on Federal Leases: Final Rule.	2000 Federal Oil Final Rule.
February 28, 2000	65 FR 10436	Establishing Oil Value for Royalty Due on Indian Leases. Supplementary Proposed Rule and Notice of Extension of Comment Period.	2000 Indian Oil Revised Supplementary Proposed Rule.
January 5, 2000	65 FR 403	Establishing Oil Value for Royalty Due on Indian Leases. Supplementary Proposed Rule	2000 Indian Oil Supplementary Proposed Rule.
August 10, 1999: Effective January 1, 2000.	64 FR 43506	Amendments to Gas Valuation Regulations for Indian Leases. Final Rule	1999 Indian Gas Final Rule.
April 9, 1998	63 FR 17349	Establishing Oil Value for Royalty Due on Indian Leases: Proposed Rule. Extension of Public Comment Period	1998 Indian Oil Proposed Rule Comment Period Extension.
February 12, 1998	63 FR 7089	Establishing Oil Value for Royalty Due on Indian Leases. Proposed Rule	1998 Indian Oil Proposed Rule.
January 15, 1988	53 FR 1184	Part 3—Revision of Oil Product Valuation Regulations and Related Topics. Final Rule	1988 Oil Valuation Final Rule.