

to CC:PA:LPD:PR (REG-114726-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-114726-04).

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Cathy Vohs, (202) 622-6090; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622-4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The subject of the public hearing is the notice of proposed rulemaking (REG-114726-04) that was published in the **Federal Register** on Wednesday, November 10, 2004 (69 FR 65108).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by February 21, 2005.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04-28328 Filed 12-27-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114726-04]

RIN 1545-BD23

Distributions From a Pension Plan Under a Phased Retirement Program; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on November 10, 2004 (69 FR 65108), providing rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a bona fide phased retirement program.

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-114726-04) that is the subject of this correction is under section 401(a) of the Internal Revenue Code.

Need for Correction

As published, REG-114726-04 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-114726-04), that was the subject of FR Doc. 04-24874, is corrected as follows:

1. On page 65111, column 2, in the preamble under the paragraph heading "*Explanation of Provisions*", fourth paragraph, line 9, the language, "retirement benefit, commencing a later" is corrected to read "retirement benefit, commencing at a later".

2. On page 65112, column 1, in the preamble under the paragraph heading "*Explanation of Provisions*", first paragraph, line 1, the language, "the continued availability of heath" is corrected to read "the continued availability of health".

3. On page 65112, column 1, in the preamble under the paragraph heading "*Explanation of Provisions*", first paragraph, line 6, the language, "rules relating to heath coverage." is corrected

to read "rules relating to health coverage."

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04-28329 Filed 12-27-04; 8:45 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000 and 4010

RIN 1212-AB01

Electronic Filing—Annual Financial and Actuarial Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require that certain identifying, financial, and actuarial information be filed electronically in a standardized format. In addition, the proposed rule would require the filing of additional items of supporting information that are readily available to the filer. Finally, the proposed rule would require a filer for the previous year who does not believe a filing is required for the current year to demonstrate why there is no current filing requirement. The proposed rule would benefit filers by streamlining the filing process and would enhance the PBGC's ability to effectively administer the pension insurance program.

DATES: Comments must be received on or before January 27, 2005. See "30-day comment period" below.

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 submitted electronically through the PBGC's Web site at <http://www.pbgc.gov/regs>, or by fax to 202-326-4112. The PBGC will make all comments available on its Web site, <http://www.pbgc.gov>. Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, 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: This proposed rule is part of the Pension Benefit Guaranty Corporation's (PBGC's) ongoing effort to streamline regulation and to improve administration of the pension insurance program, with a focus on making pension-related data more accurate, complete, and—in particular—transparent. It is also part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses the filing of information required under part 4010 of the PBGC's regulations (Annual Financial and Actuarial Information Reporting) and builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). In order to give the PBGC an opportunity to anticipate and attempt to minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant funding problems. Specifically, reporting is required by a controlled group if: (1) The aggregate unfunded vested benefits of all plans maintained by members of the controlled group exceed \$50 million (disregarding plans with no unfunded vested benefits); (2) the conditions specified in section 302(f) of ERISA and section 412(n) of the Internal Revenue Code for imposing a lien for missed contributions exceeding \$1 million have been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service has granted minimum funding waivers in excess of \$1 million to any plan maintained by any member of the controlled group, and any portion of the waiver(s) is still outstanding.

Pursuant to section 4010 of ERISA, the PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010. The PBGC

reviews the information that is filed and enters it into an electronic data base for more detailed analysis. Computer-assisted analysis of this information helps the PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information, the section 4010 filing plays a major role in the PBGC's ability to protect participant and premium-payer interests.

The PBGC does not currently provide a form for section 4010 filings and thus filers provide the information in a non-standard format. This makes the information harder to use, restricts the PBGC's ability to perform electronic data analysis, and in general results in unnecessary delays. The PBGC's experience with section 4010 filings has led the PBGC to conclude that its ability to protect participant and premium-payer interests would increase and that the filing process would work better if filers provided information electronically and in a standardized format, and is therefore proposing to require electronic filing of section 4010 information in a standardized format.

The PBGC is also proposing to require the submission of certain additional information it needs to carry out its role protecting participant and premium-payer interests; to modify the rules for determining whether aggregate unfunded vested benefits exceed \$50 million (the \$50 million section 4010 gateway test); and to remove the requirement that a power of attorney accompany any filing made by a person other than a filer.

Standardized electronic format. This proposed rule would require electronic filing in a standardized format (except as otherwise provided by the PBGC), in accordance with instructions on the PBGC's Web site (<http://www.PBGC.gov>). This would enable the PBGC to simplify the reporting process and to improve the accuracy, completeness, and timeliness of the information it receives. The PBGC would be able to access the information quickly and in a complete manner from its data base, while imposing very little additional burden on filers. Almost all section 4010 filers are large corporations accustomed to submitting electronic filings with other government agencies, such as with the Securities and Exchange Commission using EDGAR.

Additional supporting information requirements. Certain additional supporting information not currently required by the regulation is necessary

for the PBGC to effectively carry out its statutory responsibilities. The additional information is typically already collected, prepared, and maintained by filers; the new requirement, therefore, imposes very little additional burden.

Liability separated by participant status. Under the current section 4010 filing process, the information about benefit liabilities that the PBGC now receives under § 4010.8(a)(2) does not reflect the breakdown of these liabilities among: (1) Retired participants and beneficiaries receiving payments, (2) terminated vested participants, and (3) active participants; nor are filers required to report the number of participants in each category. This breakdown is necessary to enable the PBGC to better estimate plan liabilities by reflecting the impact of the passage of time and any change in plan assumptions or provisions. Accordingly, the PBGC proposes to amend § 4010.8(a)(2) to require that benefit liabilities be reported separately for these three categories of participants and that the number of participants in each category be reported.

Actuarial valuation report. Section 4010.8(a)(3) of the current regulation requires filers to provide a copy of the actuarial valuation report (AVR) "that contains or is supplemented by" certain information, which the regulation lists. The PBGC has found that this listing omits certain important information that is not always included in the AVR. The proposed rule would add the following to the list: (1) The current liability, vested and nonvested, calculated pursuant to Internal Revenue Code Section 412 (separated into information for retired participants and beneficiaries receiving payments, terminated vested participants, and active participants); (2) the expected increase in current liability due to benefits accruing during the plan year; and (3) the expected plan disbursements for the plan year. Because this information has necessarily been developed to prepare the AVR, its submission to the PBGC should impose little additional burden.

Specified actuarial assumptions. The PBGC has found that filers do not always use the mandated actuarial assumptions for purposes of reporting benefit liabilities under section 4010. Such a violation is subject to the assessment of a PBGC penalty under ERISA section 4071 of up to \$1,100 for each day the violation continues. In order to help filers avoid the assessment of such a penalty and to ensure that the mandated assumptions are used, the proposed rule would require the filer to specify the actuarial assumptions for

interest rate (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, used to calculate benefit liabilities under § 4010.8.

Information on exempt entities. Under the current PBGC regulations (see §§ 4010.4(d), .7(a), .9(a)), filers are not required to include in their section 4010 reports identifying or financial information about “exempt entities” (certain small entities that are not contributing sponsors). The exemption was added to the original final rule in response to comments on the proposed rule that it would be unnecessarily burdensome to require filers to report on small, non-sponsor entities. However, these entities sometimes provide a source of recovery for PBGC claims (should any arise) that is not available to other creditors. Reporting is necessary because the PBGC must be aware of the existence of such entities before it can assert claims. To minimize the additional burden on filers, the proposed rule would require the filer to provide initially only the identifying information for exempt entities. The rule would make clear that additional information about exempt entities must be submitted upon written request by the PBGC.

In addition, exempt entities are not required to file. The PBGC invites comments on whether the threshold, under § 4010.4(d), for determining what is an exempt entity is appropriate.

Information on exempt plans. Under the current PBGC regulations (see §§ 4010.7(b), .8(a), (c)), filers are required to include in their section 4010 reports identifying information about “exempt plans” (certain small or fully funded plans), but are not required to report actuarial information about them. The proposed rule would make clear that additional information about exempt plans must be submitted upon written request by the PBGC.

Financial information on controlled group members. In the case of a controlled group with consolidated financial statements, the current regulation requires the reporting of revenue, operating income, and net assets only for each contributing sponsor (other than an exempt entity). The PBGC has found that it needs this information breakdown on all nonexempt entities included in the consolidated financial statements, not only on contributing sponsors. This information enables the PBGC to identify which controlled group members hold the assets of the consolidated group. Therefore, the proposed rule would require this

information breakdown for all members included in the controlled group’s consolidated financial statements (other than exempt entities). This information breakdown is currently maintained by controlled groups that file consolidated statements, and thus providing it would not be burdensome.

Identification of controlled group changes. To enable the PBGC to keep track of controlled group members and plans, the proposed rule would require the filer to tell the PBGC which controlled group members and plans joined or left the controlled group during the information year.

Frozen plan information. In order for the PBGC to assess the risk and exposure presented by a plan, the proposed rule would require the filer to identify which plans are frozen as well as the nature of the freeze (*e.g.*, service is frozen but pay is not).

Demonstration by previous filer of exemption. The proposed rule adds a new requirement for any filer that was required to file for the previous year but is not required to file for the current year. Under the proposed rule, these previous filers would need to demonstrate to the PBGC that a filing is not required for the current year. On occasion, when the PBGC discovers that a previous filer has not made a submission for the current year, the PBGC has contacted the filer to determine whether the filer has overlooked the current filing obligation. The PBGC has discovered a number of instances of such oversight. The new requirement would enable the PBGC to ascertain quickly those previous filers that do not need to file for the current year. In addition, it may prevent inadvertent failures to file and thereby prevent the assessment, or reduce the amount, of penalties. Because previous filers need to determine each year whether they are required to file, the new requirement should impose little additional burden.

Modification by instructions on Web site. The proposed rule would allow the PBGC, through instructions on its Web site, to modify the format of the information and to require the submission of additional information relating to the specific information described in the regulation.

\$50 million section 4010 gateway test. The current regulation allows filers to determine unfunded vested benefits for purposes of the \$50 million section 4010 gateway test using an optional assumptions method. In essence, under the optional method, unfunded vested benefits are determined by using: (1) An interest rate equal to 100% of the annual yield for 30-year Treasury securities, (2)

fair market value of plan assets, and (3) specified mortality tables. The optional method was added when the current rule was adopted in 1995 in response to comments because it was expected that the optional assumptions shortly would become the standards that would apply for calculating the variable rate premium under ERISA section 4006. In fact, these assumptions have not become the standards. Instead, Congress has passed several laws that temporarily set the interest rate to be used for calculating the variable rate premium under ERISA section 4006. Under current law, for the 2004 and 2005 plan years, the interest rate is based upon long-term investment grade corporate bonds. Because of these changes and the possibility of future changes in this area, the PBGC proposes to eliminate the use of the optional assumptions method for purposes of the \$50 million section 4010 gateway test. Moreover, reporting for this purpose is warranted if the \$50 million section 4010 gateway test is reached using the general rule under § 4006.4 of this chapter for determining unfunded vested benefits.

In addition, the PBGC proposes to clarify the rules governing which contributions may be taken into account when determining unfunded vested benefits for purposes of the \$50 million section 4010 gateway test.

Power of attorney requirement. The current rule requires the submission of a signed power of attorney whenever a person other than a filer submits the required information. The PBGC proposes to simplify the process by eliminating this requirement as unnecessary. The requirement for a certification by the enrolled actuary would remain, regardless of who submits the filing.

30-day comment period. For this proposed rule, the PBGC is providing a 30-day comment period. The PBGC’s need for more complete and up-to-date information under section 4010 has become acute. The recent increase in the number of failures of large underfunded plans, as most clearly evidenced by developments in the airline industry, has heightened the need for the PBGC to know when it must take immediate action to protect participant and premium-payer interests. The information provided by filers pursuant to section 4010 is crucial in allowing the PBGC to act promptly and responsibly.

Because most filers have calendar information years, most section 4010 filings are due on April 15 following the end of the information year. The final rule would need to be in effect well before April 15 to allow filers time to adjust to the new procedures. Were the

PBGC to provide the usual 60-day comment period, it would be extremely difficult to provide adequate notice to filers in order for them to prepare for the filings due April 15, 2005. The delay in applicability would mean that over 80% of filers (those who file on a calendar year basis) would not file under the new rules until April 15, 2006. This significant delay could seriously hamper the PBGC's ability to act promptly where necessary.

Applicability. This proposed rule would apply to reporting for any information year ending on or after December 31, 2004.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed this notice under Executive Order 12866.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. The tests for identifying filers under section 4010(b) of ERISA effectively limit the filing requirements to large companies and their controlled groups. 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.

The PBGC is submitting the information requirements contained in this proposed rule to the Office of Management and Budget for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. Persons may obtain copies of the PBGC's request free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202-326-4020. A summary of the proposed methodology for electronic submission 4010 information filing (including draft screen shots and instructions) is available on the PBGC's Web site at <http://www.pbgc.gov>. This proposed rule would modify paperwork collections under both part 4000 (approved under OMB control number 1212-0059; expires 10/31/06) and part 4010 (approved under OMB control number 1212-0049; expires 3/31/05). 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.

The PBGC needs the information required to be submitted under part 4010 to enable it (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members, (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities, and (3) to take action to protect participant and premium-payer interests.

The PBGC estimates that an average of 400 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information (including the changes in this proposed rule) is 8.7 hours and \$13,750 per controlled group, for a total burden of 3,480 hours and \$5,500,000.

Comments on the paperwork provisions under this rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. The Office of Management and Budget requests that comments be received on or before January 27, 2005 to ensure their consideration.

Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4010

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC proposes to amend 29 CFR parts 4000 and 4010 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for Part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

2. Revise paragraph § 4000.3 to read as follows:

§ 4000.3 What Methods of Filing May I Use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* You must submit the information required under part 4010 of this chapter electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

- (1) On our Web site, <http://www.pbgc.gov>;
- (2) In our various printed forms and instructions packages; and
- (3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC 20005-4026; telephone 1-800-400-7242 (for participants), or 1-800-736-2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to the appropriate number.)

3. Amend § 4000.4 by adding two sentences to the end of the section to read as follows:

§ 4000.4 Where do I file my submission?

* * * You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

4. Amend § 4000.24 as follows:

- a. Add a sentence to the end of paragraph (a); and
- b. Add a sentence to the end of paragraph (b)(3)

The additions read as follows:

§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?

* * * A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) * * *

(3) * * * A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

* * * * *

5. Amend § 4000.29 by adding three sentences to the end of paragraph (a) introductory text to read as follows:

§ 4000.29 What if I use electronic delivery?

(a) * * * A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

6. The authority citation for Part 4010 continues to read as follows:

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

7. Revise § 4010.3 to read as follows:

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) Single controlled group submission. Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

8. Revise paragraphs (a)(3), (b), and (c) introductory text of § 4010.4 to read as follows:

§ 4010.4 Filers.

(a) * * *

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code totaling in excess of \$1 million and, as of the end of the plan year ending within the information year,

any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* When determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section—

(i) Contributions for the plan year ending within the filer's information year (or for any earlier plan year) are taken into account only to the extent they are paid on or before the due date or, if earlier, the filing date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b)); and

(ii) Contributions used to satisfy quarterly contribution requirements for the current plan year are not taken into account.

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

* * * * *

9. Revise paragraph (c)(2) of § 4010.5 to read as follows:

§ 4010.5 Information year.

* * * * *

(c) * * *

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

10. Revise paragraphs (a) and (b) of § 4010.6 to read as follows:

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) of this part with respect to each member of the filer's controlled group and each

plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on the PBGC's Web site.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's Web site, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

* * * * *

11. Revise § 4010.7 to read as follows:

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following identifying information with respect to each member of the controlled group (*including* exempt entities)

(1) *Current members.* For each entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) *Current plans.* For each plan that is maintained by the controlled group as of the last day of the filer's information year—

- (i) The name of the plan;
- (ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan had not been maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year; and

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (e.g., service is frozen but pay is not).

(2) *Former plans.* For any plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan, and the identifying information required by paragraph (b)(1) of this section as of the date immediately preceding that date.

12. Amend § 4010.8 by revising paragraphs (a) inductive text and (1) through (4), (5) introductory text, (5)(iv) through (viii), (6), (b) introductory text, (b)(1), and (2) as follows:

§ 4010.8 Plan actuarial information.

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

- (1) The number of—
 - (i) Retired participants and beneficiaries receiving payments;
 - (ii) Terminated vested participants, and
 - (iii) Active participants;
- (2) The fair market value of the plan's assets;
- (3) The value of the plan's benefit liabilities, setting forth separately the

value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(4) A description of the actuarial assumptions for interest (i.e., the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as used to determine the benefit liabilities in paragraph (a)(3) of this section; and

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

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

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

(vi) The current liability, vested and nonvested, calculated pursuant to section 412 of the Code, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants,

(vii) The expected increase in current liability due to benefits accruing during the plan year, and

(viii) The expected plan disbursements for the plan year; and

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

(b) Alternative compliance for plan actuarial information. If any of the information specified in paragraph (a)(5) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(6) of this section) with the PBGC by that alternative due date.

* * * * *

13. Revise paragraphs (a) introductory text and (b)(2) of § 4010.9 to read as follows:

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following financial information for each controlled group member (other than an exempt entity)—

* * *

(b) * * *

(2) If audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

* * * * *

Issued in Washington, DC, this 22nd day of December, 2004.

Bradley D. Belt,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 04-28398 Filed 12-27-04; 8:45 am]
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-04-171]

RIN 1625-AA00

Security Zone; Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing permanent moving security zones around escorted vessels while they are in the navigable waters of the Fifth Coast Guard District. The proposed security zones would require all vessels in a 500-yard radius around escorted vessels to operate at the minimum speed necessary to navigate safely and prohibit any vessels from entering within 100 yards of an escorted vessel. These proposed security zones would mitigate