

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 41, 48, and 145****[REG-103829-99 and REG-143321-02]****RIN 1545-AX10 and 1545-BB60****Excise Taxes; Definition of Highway Vehicle; Hearing and Information Reporting Relating to Taxable Stock Transactions; Hearing****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Change of location of public hearings.

SUMMARY: This document changes the location of two public hearings on proposed regulations relating to the definition of a highway vehicle for purposes of various excise taxes and information reporting relating to taxable stock transactions.

DATES: The public hearings scheduled in room 4718 on Thursday, February 27, 2003 and Tuesday, March 25, 2003, respectively, are rescheduled to be held in the IRS Auditorium at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing (REG-103829-99), that was published in the **Federal Register** on Monday, September 16, 2002 (67 FR 58346), announced that a public hearing on proposed regulations relating to the definition of a highway vehicle for purposes of various excise taxes under sections 4041 (fuel taxes), 4051 (retail tax on heavy vehicles), 4071 (tire tax) and sections 6421 and 6427 (fuel tax credits and refunds) of the Internal Revenue Service Code would be held on Thursday, February 27, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG-143321-02), that was published in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496) and Wednesday, November 27, 2002, announced that a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Service Code would be held on Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718 of the Internal

Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The location of both public hearings has changed. The public hearing for REG-103829-99 and REG-143321-02 are being held in the Auditorium, beginning at 10 a.m., Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Because of the controlled access restrictions, attendees are not admitted beyond the lobby on the Internal Revenue Service Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,*Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03-3750 Filed 2-13-03; 8:45 am]

BILLING CODE 4830-01-P**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907****RIN 1212-AA89****Rules on Filings, Issuances, Computation of Time, and Electronic Means of Record Retention****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Proposed rule.

SUMMARY: We propose, consistent with the Government Paperwork Elimination Act, to remove requirements from our regulations that might limit electronic filing with us or electronic issuances to others. The proposed rules will give us flexibility to keep pace with ever-changing technology. In addition, they simplify and consolidate our rules on what methods you may use to send us a filing or provide an issuance to someone other than us, on how to determine the date we treat you as having made your filing or provided your issuance, and on how to compute various periods of time (including those for filings with us and for issuances to third parties). Finally, they provide rules for maintaining records by electronic means.

DATES: Comments must be received by April 15, 2003.

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

1200 K Street, NW., Washington, DC 20005-4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov, or by fax to 202-326-4112. We will make all comments available on our Web site, <http://www.pbgc.gov>. Copies of comments also may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202-326-4040).

FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: These proposed rules are part of our ongoing implementation of the Government Paperwork Elimination Act (GPEA) and are consistent with the Office of Management and Budget directive to remove regulatory impediments to electronic transactions. They address electronic means for filings with us, issuances to third parties, and recordkeeping. They build in the flexibility needed to allow us to continue to expand the availability of electronic options as technology advances. Under the proposal, much of the detailed information on permitted electronic means will be on our Web site, <http://www.pbgc.gov>, which will be updated from time to time.

The proposed rules make it easier for you to make a filing or provide an issuance on time by treating most types of submissions as filed or issued on the date sent (provided you meet certain requirements) rather than on the date received. In addition, under the proposal, the rules are easier to use—they are simpler, more uniform, and appear together in a single part of the regulations. The proposal makes similar simplifying changes to the rules for computing periods of time.

Under this proposal, our filing, issuance, computation-of-time, and electronic record-retention rules are consolidated in new subparts A through E of part 4000.

- New subpart A tells you what methods you may use for sending a filing to us. These new rules will apply to any filing with us under our regulations where the particular regulation calls for their application. For these purposes, we treat any payment to us under our regulations as a filing.

- New subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. These new rules will apply to any issuance (except a payment) under our regulations where the particular regulation calls for their application.

- New subpart C tells you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These new rules will apply to any filing or issuance under our regulations where the particular regulation calls for their application.

- New subpart D tells you how to compute time periods. These new rules will apply to any time period under our regulations (e.g., for filings with us and issuances to third parties) where the particular regulation calls for their application.

- New subpart E tells you how to comply with any recordkeeping requirement under our regulations using electronic means.

Existing Part 4000's distribution and derivation tables, which show the changes that occurred as a result of the PBGC's July 1, 1996, reorganization and renumbering of its regulations (61 FR 32574), will be moved to the PBGC's Web site at <http://www.pbgc.gov>, and combined with similar tables showing the changes that occurred as a result of the PBGC's June 29, 1981, reorganization and renumbering of its regulations (46 FR 32574). A note at the beginning of the PBGC's regulations will refer users to the PBGC's Web site for the tables.

Method of Filing

We are trying to provide as much flexibility as possible in filing methods. The proposed rules allow you to file any submission with us by hand, mail, or commercial delivery service, and refer you to our Web site, <http://www.pbgc.gov>, for current information on electronic filing, including permitted methods, fax numbers, and e-mail addresses. The instruction booklets and forms used for certain filings with us also will describe electronic and other filing methods, as appropriate, and will be available on our Web site.

Where To File

Under the proposed rule, we are removing the filing addresses from our regulations and putting them on our Web site, <http://www.pbgc.gov>, and in the instructions to our forms; addresses will also be available through our Customer Service Center, 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.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

Method of Issuance

The proposed rules on methods of issuance permit you to use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part. (However, for certain issuances, posting is specifically permitted by the regulation governing the particular issuance.)

The proposed rules include a safe-harbor method for providing an issuance by electronic media. The proposed safe-harbor method generally tracks the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) concerning disclosure of certain employee benefit plan information through electronic media, as set out at 29 CFR 2520.104b-1. Our safe-harbor method would be available to any person using electronic media to satisfy issuance obligations under our regulations.

These proposed rules on methods of issuance do not address compliance with the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. 7001-7006) ("E-SIGN").

Date of Filing or Issuance

The proposed rules tell you how we will determine the date you filed your submission with us and the date you provided your issuance to someone other than us (such as a participant). In some cases, other PBGC rules relating to issuances to third parties refer to when an issuance is *received*. (For instance, when there is a request for abatement (regulation § 4207.3), interest is credited to the employer if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application action.) These proposed rules would not affect those other receipt rules for issuances to third parties. Similarly, these proposed rules would not affect any receipt rule for filings with the PBGC, except to the

extent these rules describe how to determine when a document is received (for instance, filings received by the PBGC after 5 p.m. are treated as received on the next business day).

Date of Filing in General

Under the proposed rule, we will treat most types of submissions as filed on the date you send the submission to us if you comply with certain requirements. The requirements vary depending on the method of filing you use. We may ask you for evidence of when you sent a submission to us.

There are a few types of submissions to us that we always treat as filed when received (not when sent), no matter what method you use: (1) Applications for benefits and related submissions (unless the instructions for the applicable forms provide for an earlier date), (2) advance notices of reportable event (under subpart C of section 4043), (3) notices of missed contributions exceeding \$1 million (under subpart D of section 4043), and (4) requests for approval of a multiemployer plan amendment. The "filed-when-received" rule is necessary for these submissions because we may need to act quickly to provide benefit payments, to protect participants or premium payers, or to act within a statutory time frame.

In these cases, as well as cases where you do not meet the requirements for your filing date to be the date you send your submission, your filing date is the date we receive your submission. However, if we receive your submission after 5 p.m. (our time) on a business day, or anytime on a weekend or Federal holiday, we will treat it as received on the next business day.

Date of Issuance in General

Under the proposed rule, we will treat most types of issuances to third parties as provided on the date you send the issuance if you comply with certain requirements. The requirements vary depending on the method of issuance you use. The proposed rules for determining the date of an issuance generally track the proposed rules for determining the date of a filing; however, there are some differences for issuances using electronic means. An electronic issuance meeting the proposed safe harbor will have the benefit of the "send-date" rule. An electronic issuance that meets the general standard for issuances (i.e., using measures reasonably calculated to ensure actual receipt), but not the safe harbor, will be deemed issued on the date received by the intended recipient.

Filing and Issuance by U.S. Postal Service

If you send your submission to us, or provide an issuance to someone else, by First-Class Mail (or another at least equivalent class), and you properly mail it by the last scheduled collection of the day, your filing or issuance date is the date you mail it. If you properly mail it later than the last scheduled collection or on a day when there is no scheduled collection, your filing or issuance date is the date of the next scheduled collection.

If your submission or issuance has a legible U.S. Postal Service postmark, we will presume your filing or issuance date is the date of the postmark. However, you may prove an earlier date. The same rules apply if your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected.

Filing and Issuance Using the Postal Service of a Foreign Country

If you send your submission to us, or provide an issuance to someone else, using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

Filing and Issuance by Commercial Delivery Service

If you send your submission to us, or provide an issuance to someone else, by a commercial delivery service that meets certain requirements (described below) and you properly deposit your submission or issuance by the last scheduled collection of the day, your filing or issuance date is the date you deposit your submission or issuance; if you properly deposit it later than the last scheduled collection or on a day when there is no scheduled collection, your filing or issuance date is the date of the next scheduled collection.

To benefit from this "send-date" rule, you must use: (1) A "designated delivery service" under Internal Revenue Code § 7502(f) (our Web site, <http://www.pbgc.gov>, will list the designated delivery services), or (2) a service for which it is reasonable to expect that your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the date of collection.

Filing and Issuance by Hand Delivery

If you hand deliver your submission or issuance, your filing or issuance date is the date of receipt at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present.

For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox.

Filing and Issuance by Electronic Delivery

You may submit most types of filings to PBGC electronically. If you do, the filing date for your submission is the date you transmit it to us at the proper address, provided (1) you comply with the technical requirements for that type of submission (our Web site, <http://www.pbgc.gov>, tells you when electronic filing is permitted and, if so, identifies the technical requirements for each type of submission), and (2) when sending an e-mail with an attachment, you include, in the body of the e-mail, the name and telephone number of the person for us to contact if we are unable to read the attachment.

Under certain circumstances, you may provide issuances electronically. An electronic issuance meeting the proposed safe harbor will have the benefit of a "send-date" rule. An electronic issuance that meets the general standard for issuances (*i.e.*, using measures reasonably calculated to ensure actual receipt), but not the safe harbor for electronic filings, will be deemed issued on the date received by the intended recipient. For any issuance in the form of an e-mail, you must include, in the body of the e-mail, the name and telephone number of the person to contact if the recipient is unable to read the attachment.

Filing and Issuance by Submission of Computer Disk

For most types of filings with PBGC, you may send us your submission on a computer disk (*e.g.*, a CD-ROM or floppy diskette). Similarly, you may be able to provide certain issuances on computer disk. For filings, you must comply with the technical requirements for that type of submission. For issuances, you must meet certain safe-harbor requirements. For both filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk. The rules for determining the filing or issuance date of your submission of a computer disk will apply as if you sent us a paper version of your submission.

Requirement To Resend

If you have reason to believe that we or the intended recipient has not

received your electronic or paper filing or issuance (or has received it in a form that is not useable), you must promptly resend it. If you do so, we will treat it as filed or issued on the original filing or issuance date. If you are not prompt, your filing or issuance date will be the filing or issuance date of the resubmission or reissuance.

De Minimis Issuance Errors

We will not treat your issuance as untimely based on your failure to provide it to a participant or beneficiary in a timely manner if the failure resulted from administrative error and involved only a *de minimis* percentage of intended recipients, provided that you resend the issuance to the intended recipient promptly after discovering the error. (Under our existing regulations, this rule applies only to standard and distress termination issuances; the proposed rule applies it to all our issuances under our regulations.)

Computation of Time

The proposed computation-of-time rules tell you how to compute time periods under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application. (Some of our regulations will contain specific exceptions or modifications to these proposed rules.)

When computing a time period (whether counting forwards or backwards) under these rules, exclude the day of the act, event, or default that begins the period; include the last day of the period; and if the last day is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The weekend and holiday rule also applies to deadlines for which counting is not required, such as "the last day" of a plan year.

For example, suppose that you miss a required minimum funding contribution of \$2 million that has a November 13, 2003, due date. Under our regulations, you are required to file a notice of a missed contribution (Form 200) no later than 10 days after the due date for the missed contribution. To determine your deadline, count November 14 as day 1, November 15 as day 2, November 16 as day 3, and so on. Therefore, November 23 is day 10. Since November 23, 2003, is a Sunday, you will have until Monday, November 24, 2003, to file the notice.

As another example, suppose you are required to file an advance notice of reportable event for a transaction that is effective December 16, 2003. Under our

regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 15 as day 1, December 14 as day 2, December 13 as day 3, and so on. Therefore, November 16 is day 30. Since November 16, 2003, is a Sunday, you will have until Monday, November 17, 2003, to file the notice.

If a time period is measured in months, you would first identify the day of the calendar month on which you start counting (*i.e.*, the date of the act, event, or default that triggers the period). Then you would look to the corresponding day of the calendar month in which you stop counting. For example, a one-month period measured from January 15 ends (if counting forward) on February 15 or (if counting backward) on December 15. In this example, as in most cases where you are counting months, the day of the calendar month in which the period starts (the 15th) corresponds to the same numbered day of the calendar month in which the period ends. There are two special rules that apply where you start counting on a day that is at or near the end of a calendar month:

- If you start counting on the last day of a calendar month, the corresponding day of any later (or earlier) calendar month is the last day of that calendar month. For example, for a three-month period measured from November 30, the corresponding day (if counting forward) is the last day of February (the 28th or 29th) or (if counting backward) the last day of August (the 31st).

- If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, for a one-month period measured from January 29, the corresponding day is the last day of February (the 28th or 29th).

Electronic Means of Record Retention

The proposed rule provides guidance on record maintenance and retention using electronic means. The proposed rule generally tracks the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) for retaining records by electronic means, set out at 29 CFR 2520.107-1.

You remain responsible for following our electronic recordkeeping rules, even if you rely on others for help. For example, if a service provider to a plan administrator creates, maintains, retains, prepares, or keeps physical custody of the plan's records, the plan administrator must ensure that the service provider complies with these rules.

The proposed recordkeeping requirements are consistent with the

goals of E-SIGN and are designed to facilitate voluntary use of electronic records while ensuring continued accuracy, integrity and accessibility of records required to be kept under our regulations. The requirements are justified by the importance of the records involved, are substantially equivalent to the requirements imposed on records that are not electronic records, will not impose unreasonable costs on the acceptance and use of electronic records, and do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520, 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 Office of Management and Budget (OMB) control number. The information collection requirements related to the regulations that would be affected by this proposed action were previously approved by OMB. We are requesting OMB's approval of the proposed changes in our filing, issuance, computation-of-time, and recordkeeping rules.

The proposed rules will promote the use of appropriate automated, electronic, or other technological collection techniques or other forms of information technology in connection with the approved information collections. Although the proposed rules are expected to make the information collections more convenient to the public by allowing use of electronic means, expanding the choice of filing, issuance, and recordkeeping methods, and giving the benefit of a "when-sent" filing or issuance date for most types of submissions, we do not expect the changes to materially affect burden and are therefore not revising the annual burden estimates currently approved by OMB for each of our regulations.

We invite comment from the public on any issues arising under the Paperwork Reduction Act relating to this proposed rule. We specifically seek public comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize 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.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

We certify under section 605(b) of the Regulatory Flexibility Act that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule does not affect the underlying requirements (*e.g.*, to file a submission with us, provide an issuance to a third party, or retain records) to which the proposed rules would apply. Nor does the final rule require any plan or other entity to make use of electronic media for either disclosure or recordkeeping purposes or to change the method it currently uses. Entities may avoid both any marginal cost and any beneficial impacts by simply retaining their existing paper-based or electronic methods of compliance with disclosure requirements or existing paper-based methods of compliance with recordkeeping requirements. (For those entities that already use electronic media for recordkeeping purposes, any expense associated with conforming their procedures to the minimum standards in this proposal would be marginal.) We do not expect the economic impact (if any) associated with the proposed changes to be significant for entities of any size, and therefore certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects*29 CFR Part 4000*

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4003

Administrative practice and procedure, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4010

Employee benefit plans; Penalties; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4050

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4062

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4203

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4207

Employee benefit plans, Pension insurance.

29 CFR Part 4208

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4219

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4220

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4221

Employee benefit plans, Pension insurance.

29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4245

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4281

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4901

Freedom of information.

29 CFR Part 4902

Privacy.

29 CFR Part 4903

Claims, Government employees, Income taxes.

29 CFR Part 4907

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For the reasons set forth above, the PBGC proposes to amend 29 CFR parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907 of 29 CFR chapter XL as follows:

1. Add the following note above the heading for Subchapter A of Chapter XL:

Note: PBGC's regulations were substantially reorganized and renumbered effective June 29, 1981 (at 46 FR 32574) and

July 1, 1996 (at 61 FR 34002). Distribution and derivation tables showing the changes that occurred as a result of these amendments are available on the PBGC's Web site at <http://www.pbgc.gov>.

2. Revise part 4000 to read as follows:

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

Subpart A—Filing Rules

Sec.

4000.1 What are these filing rules about?

4000.2 What definitions do I need to know for these rules?

4000.3 What methods of filing may I use?

4000.4 Where do I file my submission?

4000.5 Does the PBGC have discretion to waive these filing requirements?

Subpart B—Issuance Rules

4000.11 What are these issuance rules about?

4000.12 What definitions do I need to know for these rules?

4000.13 What methods of issuance may I use?

4000.14 What is the safe-harbor method for providing an issuance by electronic media?

4000.15 Does the PBGC have discretion to waive these issuance requirements?

Subpart C—Determining Filing and Issuance Dates

4000.21 What are these rules for determining the date of a filing or issuance about?

4000.22 What definitions do I need to know for these rules?

4000.23 When is my submission or issuance treated as filed or issued?

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

4000.25 What if I use the postal service of a foreign country?

4000.26 What if I use a commercial delivery service?

4000.27 What if I hand deliver my submission or issuance?

4000.28 What if I send a computer disk?

4000.29 What if I use electronic delivery?

4000.30 What if I need to resend my filing or issuance for technical reasons?

4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

4000.32 Does the PBGC have discretion to waive any requirements under this part?

Subpart D—Computation of Time

4000.41 What are these computation-of-time rules about?

4000.42 What definitions do I need to know for these rules?

4000.43 How do I compute a time period?

Subpart E—Electronic Means of Record Retention

4000.51 What are these record retention rules about?

4000.52 What definitions do I need to know for these rules?

4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

4000.54 May I dispose of original paper records if I keep electronic copies?

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

Subpart A—Filing Rules

§ 4000.1 What are these filing rules about?

Where a particular regulation calls for their application, the rules in this subpart A of part 4000 tell you what filing methods you may use for any submission (including a payment) to us. They do not cover an issuance from you to anyone other than the PBGC, such as a notice to participants. Also, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. (Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.2 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person filing with us.

§ 4000.3 What methods of filing may I use?

(a) *Paper filings.* You may file any submission with us by hand, mail, or commercial delivery service.

(b) *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.)

§ 4000.4 Where do I file my submission?

To find out where to send your submission, visit our Web site at <http://www.pbgc.gov>, see the instructions to

our forms, or call our Customer Service Center (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.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a specified bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

§ 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart B—Issuance Rules

§ 4000.11 What are these issuance rules about?

Where a particular regulation calls for their application, the rules in this subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (e.g., a participant or beneficiary). They do not cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26 of the United States Code)). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.12 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person providing the issuance to a third party.

§ 4000.13 What methods of issuance may I use?

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.*

Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

§ 4000.14 What is the safe harbor method for providing an issuance by electronic media?

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that appraises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (e.g., “The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation.”); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart C—Determining Filing and Issuance Dates

§ 4000.21 What are these rules for determining the filing or issuance date about?

Where the particular regulation calls for their application, the rules in this subpart C of part 4000 tell you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These rules do *not* cover payments to third parties. In addition, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26 of the United States Code)). In meeting those requirements, you should follow any applicable rules under those requirements for determining the filing and issuance date. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.22 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday. We means the PBGC.

You means the person filing with us or the person providing the issuance to a third party.

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) *Filed or issued when sent.*

Generally, we treat your submission as filed, or your issuance as provided, on the date you send it, if you meet certain requirements. The requirements depend upon the method you use to send your submission or issuance (see §§ 4000.24 through 4000.29). (Certain filings are always treated as filed when received, as explained in paragraph (b)(2) of this section.)

(b) *Filed or issued when received.* (1)

In general. If you do not meet the requirements for your submission or issuance to be treated as filed or issued when sent (see §§ 4000.24 through 4000.32), we treat it as filed or issued on the date received in a permitted format at the proper address.

(2) *Certain filings always treated as filed when received.* We treat the following submissions as filed on the date we receive your submission, no matter what method you use:

(i) *Applications for benefits.* An application for benefits or related submission (unless the instructions for the applicable forms provide for an earlier date);

(ii) *Advance notices of reportable events.* Information required under subpart C of part 4043 of this chapter, dealing with advance notice of reportable events;

(iii) *Form 200 filings.* Information required under subpart D of part 4043 of this chapter, dealing with notice of certain missed minimum funding contributions; and

(iv) *Requests for approval of multiemployer plan amendments.* A request for approval of an amendment filed with the PBGC pursuant to part 4220 of this chapter.

(3) *Determining our receipt date for your filing.* If we receive your submission at the correct address by 5 p.m. (our time) on a business day, we treat it as received on that date. If we receive your submission at the correct address after 5 p.m. on a business day, or anytime on a weekend or Federal holiday, we treat it as received on the next business day. For example, if you send your fax or e-mail of a Form 200 filing to us in Washington, DC, on Friday, March 15, from California at 3 p.m. (Pacific standard time), and we receive it immediately at 6 p.m. (our time), we treat it as received on Monday, March 18.

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

(a) *In general.* Your filing or issuance date is the date you mail your submission or issuance using the U.S.

Postal Service if you meet the requirements of paragraph (b) of this section, and you mail it by the last scheduled collection of the day. If you mail it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address.

(b) Requirements for "send date."

Your submission or issuance must meet the applicable postal requirements, be properly addressed, and you must use First-Class Mail (or a U.S. Postal Service mail class that is at least the equivalent of First-Class Mail, such as Priority Mail or Express Mail). However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(c) Presumptions. We make the following presumptions—

(1) U.S. Postal Service postmark. If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible U.S. Postal Service postmark, we presume that the postmark date is the filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(2) Private meter postmark. If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, we presume that the metered postmark date is your filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(d) Examples. (1) You mail your issuance using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your issuance in a mailbox at 4 p.m. on Friday, March 15 and the next scheduled collection at that mailbox is 5 p.m. that day. Your issuance date is March 15. If on the other hand you deposit it at 6 p.m. and the next collection at that mailbox is not until Monday, March 18, your issuance date is March 18.

(2) You mail your submission using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your submission in the mailbox at 4 p.m. on Friday, March 15, and the next scheduled collection at that mailbox is 5 p.m. that day. If your submission does not show a March 15 postmark, then you may prove to us that

you mailed your submission by the last scheduled collection on March 15.

§ 4000.25 What if I use the postal service of a foreign country?

If you send your submission or issuance using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

§ 4000.26 What if I use a commercial delivery service?

(a) In general. Your filing or issuance date is the date you deposit your submission or issuance with the commercial delivery service if you meet the requirements of paragraph (b) of this section, and you deposit it by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery). If you deposit it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address. However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(b) Requirements for "send date." Your submission or issuance must meet the applicable requirements of the commercial delivery service, be properly addressed, and—

(1) Delivery within two days. It must be reasonable to expect your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the next scheduled collection; or

(2) Designated delivery service. You must use a "designated delivery service" under section 7502(f) of the Internal Revenue Code (Title 26 of the United States Code). Our Web site, <http://www.pbgc.gov>, lists those designated delivery services. You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

(c) Example. You send your submission by commercial delivery service using two-day delivery. In addition, you meet the requirements of paragraph (b). Suppose the deadline for two-day delivery at the place you make your deposit is 8 p.m. on Friday, March 15. If you deposit your submission by the deadline, your filing date is March 15. If, instead, you deposit it after the 8 p.m. deadline and the next collection at that site for two-day delivery is on

Monday, March 18, your filing date is March 18.

§ 4000.27 What if I hand deliver my submission or issuance?

Your filing or issuance date is the date of receipt of your hand-delivered submission or issuance at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox. Our Web site, <http://www.pbgc.gov>, and the instructions to our forms, identify the proper addresses for filings with us.

§ 4000.28 What if I send a computer disk?

(a) In general. We determine your filing or issuance date for a computer disk as if you had sent a paper version of your submission or issuances if you meet the requirements of paragraph (b) of this section.

(1) Filings. For computer-disk filings, we may treat your submission as invalid if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

(2) Issuances. For computer-disk issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements ("using measures reasonably calculated to ensure actual receipt") of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) Requirements. To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirements of paragraphs (b)(2) and (b)(3).

(1) Technical requirements for filings. For filings, your electronic disk must comply with any technical requirements for that type of submission (our Web site, <http://www.pbgc.gov>, identifies the technical requirements for each type of filing).

(2) Technical requirements for issuances. For issuances, you must meet the safe-harbor requirements of § 4000.14.

(3) Identify contact person. For filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk.

§ 4000.29 What if I use electronic delivery?

(a) *In general.* Your filing or issuance date is the date you electronically transmit your submission or issuance to the proper address if you meet the requirements of paragraph (b) of this section. Note that we always treat an advance notice of reportable event and a Form 200 (notice of certain missed contributions) as filed when received.

(1) *Filings.* For electronic filings, if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section, we may treat your submission as invalid.

(2) *Issuances.* For electronic issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (“using measures reasonably calculated to ensure actual receipt”) of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a), you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirement of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic submission must comply with any technical requirements for that type of submission (our Web site, <http://www.pbgc.gov>, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must meet the safe-harbor requirements of § 4000.14.

(3) *Identify contact person.* For an e-mail submission or issuance with an attachment, you must include, in the body of your e-mail, the name and telephone number of the person to contact if we or the intended recipient needs you to resubmit your filing or issuance.

(c) *Failure to meet address requirement.* If you send your electronic submission or issuance to the wrong address (but you meet the requirements of paragraph (b) of this section), your filing or issuance date is the date of receipt at the proper address.

§ 4000.30 What if I need to resend my filing or issuance for technical reasons?

(a) *Request to resubmit.* (1) *Filing.* We may ask you to resubmit all or a portion of your filing for technical reasons (for example, because we are unable to open an attachment to your e-mail). In that case, your submission (or portion) is invalid. However, if you comply with the request or otherwise resolve the

problem (e.g., by providing advice that allows us to open the attachment to your e-mail) by the date we specify, your filing date for the submission (or portion) that we asked you to resubmit is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable), or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

§ 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a *de minimis* percentage of intended recipients; and

(c) You resend the issuance to the intended recipient promptly after discovering the error.

§ 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time,

if warranted by the facts and circumstances.

Subpart D—Computation of Time**§ 4000.41 What are these computation-of-time rules about?**

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (e.g., for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and § 4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26 of the United States Code)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.42 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

§ 4000.43 How do I compute a time period?

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in

paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as “the last day” of a plan year or “the fifteenth day” of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special “last-day” rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples.* (1) *Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th

day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

Subpart E—Electronic Means of Record Retention

§ 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

§ 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

We means the PBGC.

You means the person subject to the record retention requirement.

§ 4000.53 May I use electronic media to satisfy PBGC’s record retention requirements?

General requirements. You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the

recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person’s ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term “legibility” means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term “readability” means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

§ 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

3. The authority citation for part 4003 continues to read as follows:

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

4. Revise § 4003.9 to read as follows:

§ 4003.9 Method and date of filing.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

5. Revise § 4003.10 to read as follows:

§ 4003.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4003.33 [Amended]

6. Amend § 4003.33 to add the sentence “See § 4000.4 of this chapter for information on where to file.” to the end of the paragraph.

§ 4003.53 [Amended]

7. Amend § 4003.53 to add the sentence “See § 4000.4 of this chapter for information on where to file.” to the end of the paragraph.

PART 4007—PAYMENT OF PREMIUMS

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

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

9. Revise § 4007.3 to read as follows:

§ 4007.3 Filing requirements; method of filing.

(a) *Filing requirements.* The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC annual Premium Payment Package. The plan administrator of each covered plan must file the prescribed form or forms, and any premium payments due, no later than the applicable due date specified in § 4007.11.

(b) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

10. Revise § 4007.5 to read as follows:

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that you filed your submission under this part with the PBGC.

11. Revise § 4007.6 to read as follows:

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rules in part 4000.43 of this chapter governing weekends and Federal holidays do not apply.

12. Revise paragraphs (a) and (c)(1) of § 4007.10 to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments.* (1) *In general.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Internal Revenue Code (Title 26 of the United States Code), by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based.

(2) *Electronic recordkeeping.* The plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

* * * * *

(c) *Providing record information.* (1) *In general.* The plan administrator shall make the records retained pursuant to paragraph (a) of this section available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and shall submit information in such records to the PBGC within 45 days of the date of the PBGC's written request therefor, or by a different time specified therein.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

13. Revise the authority citation for part 4010 to read as follows:

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

14. Revise paragraphs (c), (d) and (e) of § 4010.10 to read as follows:

§ 4010.10 Due date and filing with the PBGC.

* * * * *

(c) *How and where to file.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4011—DISCLOSURE TO PARTICIPANTS

15. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

16. Revise § 4011.9 to read as follows:

§ 4011.9 Method and date of issuance of notice; computation of time.

(a) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery of the Participant Notice. The Participant Notice may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

(b) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date the Participant Notice was issued.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances under this part.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

17. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

18. Amend § 4022.9 by adding paragraph (d) to read as follows:

§ 4022.9 Time of payment; benefit applications.

* * * * *

(d) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

19. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

20. Amend § 4041.3 as follows:

a. Revise paragraphs (a), (b), and (c)(1) to read as follows:

b. Remove paragraph (c)(2);

c. Add the word “or” to the end of paragraph (c)(3)(i);

d. Remove paragraph (c)(3)(ii) and redesignate paragraph (c)(3)(iii) as paragraph (c)(3)(ii);

e. Redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5).

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. A proposed termination date may be any day, including a weekend or Federal holiday.

(b) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Issuance to third parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to

notice under the spin-off/termination transaction rules of § 4041.23(c) or § 4041.24(f) is treated as an affected party.

(1) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

* * * * *

21. Revise § 4041.5 to read as follows:

§ 4041.5 Record retention and availability.

(a) *Retention requirement.* (1) *Persons subject to requirement; records to be retained.* Each contributing sponsor and the plan administrator of a plan terminating in a standard termination, or in a distress termination that closes out in accordance with § 4041.50, must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and this part. If a contributing sponsor or the plan administrator maintains information in accordance with this section, the other(s) need not maintain that information.

(2) *Retention period.* The records described in paragraph (a)(1) of this section must be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(3) *Electronic recordkeeping.* The contributing sponsor or plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(b) *Availability of records.* The contributing sponsor or plan administrator must make all records needed to determine compliance with section 4041 of ERISA and this part available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and must submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein.

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

22. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

23. Revise § 4041A.3 to read as follows:

§ 4041A.3 Method and date of filing; where to file; computation of time; issuances to third parties.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

(d) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

24. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1443.

25. Revise § 4043.5 to read as follows:

§ 4043.5 How and where to file.

The PBGC applies the rules in the instructions to the applicable PBGC reporting form and subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 for information on where to file.

26. Amend § 4043.6 by removing paragraph (d) and revising paragraphs (a) and (b) and the paragraph heading of paragraph (c) to read as follows:

§ 4043.6 Date of filing.

(a) *Post-event notice filings.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with the PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(c) *Partial electronic filing; deemed filing date.* * * *

* * * * *

27. Revise § 4043.7 to read as follows:

§ 4043.7 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4050—MISSING PARTICIPANTS

28. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

29. Amend § 4050.6 by revising paragraph (d) to read as follows:

§ 4050.6 Payment and required documentation.

* * * * *

(d) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part. However, for purposes of determining the amount of an interest charge under § 4050.6(b) or § 4050.12(c)(2)(iii), the rules in § 4000.43 of this chapter governing weekends and Federal holidays do not apply.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

30. The authority citation for part 4062 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

31. Revise § 4062.9 to read as follows:

§ 4062.9 Method and date of filing; where to file.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Payment of liability must be clearly designated as such and include the name of the plan.

(b) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

32. Revise § 4062.10 to read as follows:

§ 4062.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of an interest charge under § 4062.7, the rules in § 4000.43 of this chapter governing weekends and Federal holidays do not apply.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

33. The authority citation for part 4203 continues to read as follows:

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

34. Amend § 4203.4 by revising paragraphs (a) and (c) to read as follows:

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request.* (1) *In general.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(2) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4204—VARIANCES FOR SALE OF ASSETS

35. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

36. Amend § 4204.11 as follows:

a. In the first sentence of paragraph (b), remove the word “filed” and add in its place the word “submitted”.

b. Add new paragraph (e) to read as follows:

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

* * * * *

(e) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under

this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided.

37. Amend § 4204.21 by revising paragraphs (a) and (c) to read as follows:

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *Filing of request.* (1) *In general.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1)(B) and (C) of ERISA.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

38. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

39. Amend § 4207.10 by revising paragraph (c) to read as follows:

§ 4207.10 Plan rules for abatement.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

40. Add § 4207.11 to read as follows:

§ 4207.11 Method and date of filing and issuance; computation of time.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

41. Revise the authority citation for part 4208 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

42. Amend § 4208.9 by revising paragraph (c) to read as follows:

§ 4208.9 Plan adoption of additional abatement conditions.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

43. Add § 4208.10 to read as follows:

§ 4208.10 Method and date of filing and issuance; computation of time.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

44. Revise the authority citation for part 4211 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1391(c)(1), (c)(2)(d), (c)(5)(B), (c)(5)(D), and (f).

45. Amend § 4211.22 by revising paragraphs (a) and (c) to read as follows:

§ 4211.22 Requests for PBGC approval.

(a) *Filing of request.* (1) *In general.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to submit.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4219—NOTICE, COLLECTION AND REDETERMINATION OF WITHDRAWAL LIABILITY

46. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

47. Amend § 4219.17 by revising paragraphs (a), (d) and (e) to read as follows:

§ 4219.17 Filings with PBGC.

(a) *Filing requirements.* (1) *In general.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this subpart for filing with the PBGC.

* * * * *

(d) *Where to file.* See § 4000.4 for information on where to file.

(e) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

* * * * *

§ 4219.19 [Redesignated as § 4219.20]

48. Redesignate § 4219.19 as § 4219.20.

49. Add a new § 4219.19 to read as follows:

§ 4219.19 Issuances to third parties; methods and dates.

The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided. The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances to third parties under this subpart.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

50. The authority citation for part 4220 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

51. Amend § 4220.3 by revising paragraphs (a) and (c) and adding paragraph (f) to read as follows:

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request.* (1) *In general.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is treated as filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4221—ARBITRATION OF DISPUTES IN MULTIPLE EMPLOYER PLANS

52. The authority citation for part 4221 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 4221.4 Appointment of the arbitrator. [Amended]

53. Amend paragraph (c) of § 4221.4 by revising the second sentence to read as follows:

* * * * *

(c) *Challenge and withdrawal.* * * * The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail (or by any other method that includes verification or acknowledgment of receipt and meets the requirements of § 4000.14 of this chapter) and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. * * *

* * * * *

54. Amend § 4221.6 by revising paragraph (b) to read as follows:

§ 4221.6 Hearing.

* * * * *

(b) After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand, by certified or registered mail, or by any other method that includes verification or acknowledgment of receipt and meets the requirements of § 4000.14 of this chapter.

* * * * *

55. Revise § 4221.12 to read as follows:

§ 4221.12 Calculation of periods of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

56. Revise § 4221.13 to read as follows:

§ 4221.13 Filing and issuance rules.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

§ 4221.14 PBGC-approved arbitration procedures. [Amended]

57. Revise the third sentence of paragraph (c) of § 4221.14 to read: "The application shall include:".

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIPLE EMPLOYER PLANS

58. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

59. Amend § 4231.8 by revising paragraphs (a), (c), and (d) to read as follows:

§ 4231.8 Notice of merger or transfer.

(a) *Filing of request.* (1) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(i) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(ii) The date on which one plan transfers assets to another plan involved in the transaction.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted.

* * * * *

PART 4245—NOTICE OF INSOLVENCY

60. The authority citation for part 4245 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

61. Amend § 4245.3 as follows:

a. In the first sentence of paragraph (a) remove the words "interested parties, as defined in paragraph (d) of this section" and add in their place the words "interested parties, as defined in paragraph (e) of this section".

b. Redesignate paragraph (d) as paragraph (e).

c. Revise paragraph (c) and add new paragraph (d) to read as follows:

§ 4245.3 Notice of insolvency.

* * * * *

(c) *Delivery to PBGC; filing date.* (1) *Method of delivery.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Delivery to interested parties; issuance date.* (1) *Method of delivery.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan

sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency was issued.

* * * * *

§ 4245.4 [Amended]

62. Amend the introductory language of paragraph (b) by removing the words "an interested party, as defined in § 4245.3(d)" and adding in their place the words "interested parties, as defined in § 4245.3(e)".

§ 4245.5 [Amended]

63. Amend § 4245.5 as follows:

a. In the first sentence of paragraph (a) remove the words "interested parties, as defined in § 4245.3(d)" and add in their place the words "interested parties, as defined in § 4245.3(e)".

b. Revise paragraph (d) and add paragraph (e) to read as follows:

§ 4245.5 Notice of insolvency benefit level.

* * * * *

(d) *Method of delivery to PBGC; filing date.* (1) *Method of delivery.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Method of delivery to interested parties; issuance date.* (1) *Method of delivery.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency benefit levels. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to

that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency benefit levels was issued.

§ 4245.6 [Amended]

64. In § 4245.6, amend the introductory language of paragraph (b) by removing the words "interested parties, as defined in § 4245.3(d)" and adding in their place the words "interested parties, as defined in § 4245.3(e)".

65. Revise § 4245.7 to read as follows:

§ 4245.7 PBGC address.

See § 4000.4 of this chapter for information on where to file.

66. Add § 4245.8 to read as follows:

§ 4245.8 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

67. Revise the authority citation for part 4281 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), and 1441.

68. Revise § 4281.3 to read as follows:

§ 4281.3 Filing and issuance rules.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of delivery for filings with the PBGC under this part.

(b) *Method of issuance.* See § 4281.32(c) for notices of benefit reductions, § 4281.43(e) for notices of insolvency, and § 4281.45(c) for notices of insolvency benefit level.

(c) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

69. Revise paragraph (c) of § 4281.32 to read as follows:

§ 4281.32 Notices of benefit reductions.

* * * * *

(c) *Method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of benefit reduction. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

* * * * *

70. Revise paragraphs (e) and (f) of § 4281.43 to read as follows:

§ 4281.43 Notices of insolvency and annual updates.

* * * * *

(e) *Notices of insolvency—method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the annual update to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

71. Revise paragraph (c) of § 4281.45 to read as follows:

§ 4281.45 Notices of insolvency benefit level.

* * * * *

(c) *Method of issuance.* The notices of insolvency benefit level shall be delivered to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency benefit levels.

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

72. Revise the authority citation for part 4901 to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p.235.

73. Add § 4901.6 to read as follows:

§ 4901.6 Filing rules; computation of time.

(a) *Filing rules.* (1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

74. Revise § 4901.11 to read as follows:

§ 4901.11 Submittal of requests for access to records.

A request to inspect or copy any record subject to this subpart shall be submitted to the Disclosure Officer, Pension Benefit Guaranty Corporation. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005-4026. To expedite processing, the request should be prominently identified as a "FOIA request."

75. Revise paragraph (a) of § 4901.15 to read as follows:

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation. See part 4000.4 of this chapter for information on where to file. To expedite processing, the words "FOIA appeal" should appear prominently on the request.

* * * * *

76. Revise paragraph (c) of § 4901.33 to read as follows:

§ 4901.33 Payment of fees.

* * * * *

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

77. The authority citation for part 4902 continues to read as follows:

Authority: 5 U.S.C. 552a.

78. Revise paragraphs (a) and (b) of § 4902.3 to read as follows:

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the purpose of learning whether a system of records maintained by the PBGC contains any record pertaining to the requestor or obtaining access to such a record. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005-4026.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall prominently state the words, "Privacy

Act Request." If this information is insufficient to enable the PBGC to identify the record in question, or to determine the identity of the requester (to ensure the privacy of the subject of the record), the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record or to determine the identity of the requester.

* * * * *

79. Revise paragraph (c) of § 4902.5 to read as follows:

§ 4902.5 Procedures for requesting amendment of a record.

* * * * *

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to such request as promptly as possible.

80. Revise paragraph (c) of § 4902.6 to read as follows:

§ 4902.6 Action on request for amendment of a record.

* * * * *

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

81. Revise paragraph (a) of § 4902.7 to read as follows:

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit Guaranty Corporation, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Deputy Executive Director, Pension Benefit Guaranty Corporation. The appeal shall state in detail the basis on which it is made and shall clearly state "Privacy Act Request" on the first page. In addition, the submission shall clearly state "Privacy Act Request" on the envelope (for mail, hand delivery, or commercial delivery), in the subject line (for e-mail), or on the cover sheet (for fax).

* * * * *

82. Add § 4902.10 to read as follows:

§ 4902.10 Filing rules; computation of time.

(a) *Filing rules.* (1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4903—DEBT COLLECTION

83. The authority citation for part 4903 continues to read as follows:

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402-6.

84. Amend § 4903.2 by adding paragraphs (c) and (d) to read as follows:

§ 4903.2 General.

* * * * *

(c) The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. See § 4000.4 for information on where to file.

(d) The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

85. Revise paragraph (b)(2) of § 4903.24 to read as follows:

§ 4903.24 Request for offset from other agencies.

* * * * *

(b)(1) * * *

(2) All such requests should be directed to the Director, Financial Operations Department. See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

86. The authority citation for part 4907 continues to read as follows:

Authority: 29 U.S.C. 794, 1302(b)(3).

87. Revise paragraph (c) of § 4907.170 to read as follows:

§ 4907.170 Compliance procedures.

* * * * *

(c) The Equal Opportunity Manager shall be responsible for coordinating implementation of this section.

(1) *Where to file.* See § 4000.4 of this chapter for information on where to file complaints under this part.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(4) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

* * * * *

Issued in Washington, DC, this 4th day of February, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03-3081 Filed 2-13-03; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13-03-001]

RIN 2115-AA97

Safety Zone; Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a permanent safety zone on the waters of the Columbia River in the vicinity of Vancouver, Washington. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with an annual July 4th fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before April 15, 2003.

ADDRESSES: Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, are part of docket CGD13-03-001 and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, at (503) 240-2584.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13-03-001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a permanent safety zone on the waters of the Columbia River in the vicinity of Vancouver, Washington to allow an annual July 4th fireworks display to occur in a safe environment. This event may result in a number of vessels congregating near the fireworks launching barge. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with the fireworks display.

Discussion of Proposed Rule

This rule, for safety concerns, would control vessel movements in a regulated area surrounding the fireworks

launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one mile of the Columbia River for a period of only one and a half hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Columbia River from 9:30 p.m. to 11 p.m. on July 4th. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one and a half hours in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of