

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

• *E-mail:* reg.comments@pbgc.gov.

• *Fax:* 202-326-4224.

• *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

All submissions must include the Regulatory Information Number for this rulemaking (RIN 1212-AB11). Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

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

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. The flat-rate premium applies to all covered plans; the variable-rate premium applies only to single-employer plans. Section 4006 of ERISA deals with premium rates, including the computation of premiums. Section 4007 of ERISA deals with the payment of premiums, including premium due dates and interest and penalties on premiums not timely paid, and with recordkeeping and audits.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109-280 (PPA 2006). PPA 2006 makes changes to the funding rules in Title I of ERISA and in the Internal Revenue Code of 1986 (Code) on which the variable-rate premium is based. Section 401(a) of

PPA 2006 amends the variable-rate premium provisions of section 4006 of ERISA to conform to those changes in the funding rules and to eliminate the full-funding limit exemption from the variable-rate premium. This proposed rule would amend PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) to implement the amendment to ERISA section 4006 made by PPA 2006. (PPA 2006 also includes other provisions affecting PBGC premiums that are not addressed in this rule, including provisions that cap the variable-rate premium for certain plans of small employers, make permanent the new "termination premium" (created by the Deficit Reduction Act of 2005) that is payable in connection with certain distress and involuntary plan terminations, and authorize PBGC's payment of interest on refunds of overpaid premiums. Those provisions are or will be the subject of other rulemaking actions.)

Overview of Proposed Regulatory Changes

For purposes of determining a plan's variable-rate premium (VRP) for a premium payment year beginning after 2007, the proposed rule would require unfunded vested benefits (UVBs) to be measured as of the funding valuation date for the premium payment year. The asset measure underlying the UVB calculation would be determined for premium purposes the same way it is determined for funding purposes, except that any averaging method adopted for funding purposes would be disregarded. The liability measure underlying the UVB calculation would be determined for premium purposes the same way it is determined for funding purposes, except that only vested benefits would be included and a special premium discount rate structure would be used. Filers would be able to make an election (irrevocable for five years) to use funding discount rates for premium purposes instead of the special premium discount rates.

The proposed rule would revise the premium due date and penalty structure to give some plans more time to file and others the ability to make estimated VRP filings and then follow up with adjusted final filings without penalty. Three special relief rules for VRP filers would be eliminated as no longer appropriate or necessary, and two new relief rules would be added.

The proposed rule would also explain when certain benefits are considered "vested" and would make some other changes unrelated to PPA 2006. For example, the proposed regulation would

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212-AB11

Premium Rates; Payment of Premiums; Variable-Rate Premium; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend PBGC's regulations on Premium Rates and Payment of Premiums. The amendments would implement provisions of the Pension Protection Act of 2006 (Pub. L. 109-280) that change the variable-rate premium for plan years beginning on or after January 1, 2008, and make other changes to the regulations. (Other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums are the subject of separate rulemaking proceedings.)

DATES: Comments must be submitted on or before July 30, 2007.

ADDRESSES: Comments, identified by Regulatory Information Number (RIN) 1212-AB11, may be submitted by any of the following methods:

provide explicitly that (in the absence of an exemption) a premium filing made on paper or in any other manner other than the prescribed electronic filing method (applicable to all plans for plan years beginning after 2006) does not satisfy the requirement to file. It would also clarify and strengthen recordkeeping and audit provisions.

A more detailed discussion follows.

Variable-Rate Premium Determination Dates

Under ERISA section 4006(a)(3)(E)(i) and (ii), a plan's per-participant VRP for a plan year is generally—

\$9.00 for each \$1,000 (or fraction thereof) of unfunded vested benefits ["UVBs"] under the plan as of the close of the preceding plan year

divided by the plan's participant count as of the close of the preceding plan year. (Under ERISA section 4006(a)(3)(H), added by section 405 of PPA 2006, the per-participant VRP is capped at \$5 times the participant count as of the close of the prior plan year for certain plans of small employers. The cap provision is the subject of another rulemaking.) Under ERISA section 4006(a)(3)(A)(i), the per-participant VRP is multiplied by the number of participants "in [the] plan during the plan year" to yield the total VRP. The existing premium rates regulation treats all of these provisions as referring to a single determination date. In most cases, this is the last day of the prior plan year; it is the first day of the premium payment year (the plan year for which the premium is being paid) for two categories of plans: new and newly covered plans (which are not in existence as covered plans on the last day of the prior plan year) and certain plans involved in plan spinoffs and mergers as of the beginning of the premium payment year (which otherwise would double-count or not count certain participants and UVBs for premium purposes).

The term "unfunded vested benefits" ("UVBs") is defined in ERISA section 4006(a)(3)(E)(iii). In pre-PPA section 4006(a)(3)(E)(iii), "UVBs" is defined as unfunded current liability (a term found in the funding provisions of the Code and Title I of ERISA) determined by counting only vested benefits and using a special interest rate and (under certain circumstances) a special measure of plan assets. PPA 2006 changes the funding rules for single-employer plans, eliminating the concept of current liability for plan years beginning after 2007. (As discussed below, certain plans will not use the new funding rules until a later date.) To conform to this change,

PPA 2006 changes the definition of UVBs in ERISA section 4006(a)(3)(E)(iii). As amended by PPA 2006, for plan years beginning after 2007, section 4006(a)(3)(E)(iii) provides that "UVBs"—

Means, for a plan year, the excess (if any) of * * * the funding target of the plan as determined under [ERISA] section 303(d) [corresponding to Code section 430(d)] for the plan year by only taking into account vested benefits and by using the interest rate described in [ERISA] section 4006(a)(3)(E)(iv)], over * * * the fair market value of plan assets for the plan year which are held by the plan on the valuation date.

New ERISA section 303(g) says that with certain exceptions not relevant here, "all determinations under this section [which includes the definition of "funding target" in section 303(d)(1)] for a plan year shall be made as of the valuation date of the plan for such plan year." Thus PBGC concludes that the "valuation date" for plan assets referred to in new section 4006(a)(3)(E)(iii) is the valuation date determined under section 303(g)(2). In general (under section 303(g)(2)(A)), the valuation date for a plan year is the first day of the plan year, but certain small plans may designate a different valuation date (under section 303(g)(2)(B)), which may be any day in the plan year.

The change in the definition of UVBs thus creates ambiguity about the date as of which UVBs are to be measured. Section 4006(a)(3)(E)(ii), which was not changed by PPA 2006, refers to two plan years—the "plan year" for which the VRP is being paid (the premium payment year) and the "preceding plan year," at the close of which UVBs are to be measured. New section 4006(a)(3)(E)(iii) refers only to the "plan year" in defining UVBs. And a plan's funding target and assets—the elements of UVBs—are to be measured as of the valuation date, which need not be the close of the plan year and which for many plans (those not small enough to elect otherwise) must be the beginning of the plan year.

Accordingly, PBGC must resolve the statutory ambiguity by adopting a rule regarding the date as of which UVBs are to be measured. In view of the following considerations, PBGC proposes to require that UVBs be measured as of the valuation date in the premium payment year rather than a date in the prior plan year.

Historical data indicate that most premium filers use beginning-of-the-plan-year valuation dates for funding purposes; under PPA 2006 many of them will be required to do so. Although funding valuations don't themselves produce UVB numbers that

can be used for VRP purposes, they involve the gathering of the same basic data for analysis, and the valuations are done in the same way, simply using different assumptions. It would be burdensome and impractical to require plans that must do funding valuations as of the first day of a plan year to do separate valuations as of the last day for VRP purposes.

Requiring that a funding valuation done as of the first day of the prior plan year be "rolled forward" to the last day of the prior plan year is likewise burdensome and impractical. Instructions for "roll-forwards" would necessarily be complex, especially in light of the new "segment rate" interest assumption under section 303(h)(2)(C) of PPA 2006 and section 4006(a)(3)(E)(iv) of ERISA. And "rolled-forward" valuations would tend to be inaccurate because correcting for the many changes in circumstances that can occur during the course of a year involves a significant element of estimation.

Furthermore, basing the VRP on a valuation done in the premium payment year reflects a plan's current funding status much better than basing it on a valuation done in the prior year, especially a valuation done as of the first day of the prior year. And with some changes in PBGC's premium due date and penalty rules, there will be adequate time for plans to compute premiums based on a premium payment year valuation.

Accordingly, this proposed rule requires that UVBs be measured as of the valuation date for the premium payment year (referred to as the "UVB valuation date") and adjusts premium due dates and penalty rules to accommodate the fact that this UVB valuation date is later (by at least a day and in some cases perhaps as much as a year) than "the close of the preceding plan year," the date used under pre-PPA section 4006(a)(3)(E). (No change is proposed in the date as of which participants are counted, which the revised regulations refer to as the "participant count date.")

Variable-Rate Premium Computation

As noted above, UVBs under PPA 2006 are based on a plan's funding target and the market value of its assets. Under new ERISA section 303(d)(1), as set forth in section 102 of PPA 2006, "the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year." But new ERISA section 303(g) makes clear that the funding target is to be determined as of the valuation date, which for small

plans may not be the beginning of the plan year. PBGC thus believes that what ERISA section 303(d)(1) requires is that the benefits to be valued as of the valuation date are those accrued as of the beginning of the plan year. If the valuation date is later than the first day of the plan year, accruals after the beginning of the plan year are to be ignored.

The situation regarding assets is similar. New ERISA section 4006(a)(3)(E)(iii)(II) refers to “the fair market value of plan assets for the plan year which are held by the plan on the valuation date.” Under new ERISA section 303(g)(4)(B), however, plan assets as of a valuation date later than the first day of the plan year do not include contributions for the plan year made during the plan year but before the valuation date or interest thereon. PBGC interprets section 4006(a)(3)(E)(iii)(II) as incorporating this rule, as well as the corresponding rule for prior-year contributions in section 303(g)(4)(A). Thus for a valuation date later than the first day of the plan year, UVBs would reflect neither accruals nor contributions for the plan year.

In general, a plan’s funding target and the value of its assets would be determined for premium purposes the same way they are for funding purposes except as new ERISA section 4006(a)(3)(E)(iii) and (iv) provides otherwise. In order to distinguish the funding target used for premium purposes from that used for funding purposes, the proposed regulation introduces the term “premium funding target.” In general, this means the funding target determined by taking only vested benefits into account and by using the special segment rates described in new ERISA section 4006(a)(3)(E)(iv) (the “standard premium funding target”). Those special segment rates are “spot rates” (based on bond yields for a single recent month), as opposed to the 24-month average segment rates used for funding purposes.

But in certain circumstances (described below), PBGC proposes to permit filers to use an “alternative premium funding target” that may be less burdensome to use than the standard premium funding target. A plan’s alternative premium funding target would be the vested portion of the plan’s funding target under ERISA section 303(d)(1) that is used to determine the plan’s minimum contribution under ERISA section 303 for the premium payment year—that is, an amount calculated using the same assumptions as are used to calculate the plan’s funding target under ERISA

section 303(d)(1), but based only on vested benefits, rather than all benefits.

Although instructions for post-PPA annual reports on Form 5500 series are not final, PBGC expects plans to be required to compute the vested portion of the funding target (broken down by participant category) for Form 5500 filings. PBGC also expects that the final instructions will permit or require benefits to be categorized as vested or non-vested in a manner consistent with the provisions of the proposed rule (discussed below) that explain when certain benefits are considered vested for premium purposes. The advantage to a filer of using the alternative premium funding target would be that, if the plan determined the vested portion of its funding target for purposes of the annual report (Form 5500 series) in a manner consistent with PBGC’s rules, it could use the same number for premium purposes and thus avoid having to do a second calculation for premium purposes alone.

Under the proposal, the alternative premium funding target could be used where the plan made an election to do so that would be irrevocable for a period of five years. As financial markets fluctuate, the averaged rates used for the alternative premium funding target will fluctuate above and below the spot rates used for the standard premium funding target. Locking in the election for five years will keep plans from calculating the premium funding target both ways each year and using the smaller number; the reason for permitting use of the alternative premium funding target is to reduce not premiums but the burden of computing premiums. PBGC expects that normal interest rate fluctuations will make premiums computed with the alternative premium funding target—on average, over time—approximately equal to premiums calculated with the standard premium funding target. Requiring a five-year commitment to use of the alternative premium funding target will give this averaging process time to work.

Since new ERISA section 4006(a)(3)(E)(iii)(II) speaks explicitly of the “fair market value” of assets, PBGC concludes that it would be inconsistent with the statute to permit or require the use of the averaging process described in new ERISA section 303(g)(3)(B) or the reduction of assets by the prefunding and funding standard carryover balances described in new ERISA section 303(f)(4). (The existing premium rates regulation also provides that credit balances do not reduce assets for premium purposes.)

As noted above, however, PBGC believes that adjustments must be made

for contributions as described in new ERISA section 303(g)(4). Similar adjustments are required under the current premium rates regulation. For simplicity, PBGC proposes that the adjustments be made using the effective interest rates determined for funding purposes, rather than effective interest rates computed on the basis of the premium segment rates. This will mean that the adjustments do not have to be calculated twice (once for funding purposes and again for premium purposes), and plans can use for premium purposes a figure for the value of assets that they are expected to be entering in the annual report (Form 5500 series). PBGC anticipates that the differences between funding and premium rates and the periods of time over which these rates are applied for this purpose will be small enough to justify this simplification. And as funding rates fluctuate above and below premium rates, the differences in each direction should cancel out over time.

PBGC’s proposal does not include an “alternative calculation method” for rolling forward prior year values to the current year. The alternative calculation method (ACM) in § 4006.4(c) of the current premium rates regulation was instituted when much actuarial valuation work was done using hand calculators and tables of factors. High-speed, high-memory computers are now the norm for handling both data and mathematical computations. Actuarial valuations are thus much faster now. Furthermore, the segment rate methodology for valuing benefits does not lend itself to the kind of formulaic transformation process exemplified by the existing ACM. PBGC accordingly believes that an alternative calculation method is both unnecessary and impracticable under PPA 2006.

Due Dates and Penalty Rules

PBGC expects that most plans that are required (or choose) to do funding valuations as of the beginning of the plan year (and whose UVB valuation date is thus the first day of the premium payment year) will be able to determine their UVBs by the VRP due date currently provided for in PBGC’s premium payment regulation (generally, ten and a half months after the beginning of the plan year). But there are some circumstances that can make timely determination of the VRP difficult or impossible: For example, use of a valuation date after the beginning of the plan year (applicable to small plans only) or difficulty in collecting data (e.g., because of the occurrence of unusual events during the preceding year). To deal with such circumstances,

PBGC proposes to revise its due date and penalty structure to give smaller plans more time to file and larger plans the ability to make estimated VRP filings and then correct them without penalty. The following detailed discussion of the proposed due date and penalty structure is followed by a summary table.

PBGC's current due date structure for flat- and variable-rate premiums is based on two categories of plans: those that owed premiums for 500 or more participants for the plan year preceding the premium payment year ("large" plans) and those that did not. The new structure is based on three categories. The large-plan category remains the same. A new "mid-size" category will consist of plans that owed premiums for 100 or more, but fewer than 500, participants for the plan year preceding the premium payment year. A category of "small" plans will include all other plans. The participant count for this purpose will continue to be the prior year's count; the proposed rule provides uniform language for determining both single- and multiemployer plans' participant counts for determining due dates, eliminating a slight language difference in the existing regulation.

The 100-participant break-point between the small and mid-size categories approximates the break-point in the PPA 2006 funding rules between plans that are required to use beginning-of-the-year valuation dates under ERISA section 303(g)(2)(A) and those permitted to use another date under ERISA section 303(g)(2)(B). The correspondence with the valuation date provision is only approximate. Under the valuation date provision, PPA 2006 counts participants on each day of a plan year and aggregates plans within controlled groups; under its premium due date rules, PBGC counts participants in one plan on one day. Furthermore, PPA 2006 funding rules look back to the plan year preceding the valuation year; the PBGC participant count for the plan year preceding the premium payment year is typically as of the last day of the plan year before that. Accordingly, there may be plans that are eligible to elect valuation dates other than the first day of the plan year but that do not fall into PBGC's new small-plan category. But most plans that use valuation dates other than the first day of the plan year are expected to be "small" under the new due date structure, and there is enough flexibility in the due date rules for large and mid-size plans to make premium filing manageable in most cases even for plans with valuation dates after the beginning of the plan year. In unusual cases, where a plan

with a valuation date late in the year finds itself in the large or mid-size category, PBGC has authority to waive late premium penalties.

Small Plans

For plans in the "small" category, PBGC proposes to make all premiums due on the last day of the sixteenth month that begins on or after the first day of the premium payment year (for calendar-year plans, April 30 of the year following the premium payment year). This will give any small plan at least four months to determine UVBs.

The same due date will apply to both variable- and flat-rate premiums. While there is no reason these small plans cannot determine the flat-rate premium by the current due date (the 15th day of the tenth month that begins on or after the first day of the premium payment year), PBGC wants to avoid requiring them to make two filings per year. And for simplicity, PBGC is making no distinction for due date purposes between single-employer plans that pay the VRP and single-employer (and multiemployer) plans that do not. Small single-employer plans that qualify for an exemption from the VRP and small multiemployer plans (which are not subject to the VRP) will have the same deferred due date as small single-employer plans that owe a VRP.

Mid-Size Plans

For mid-size plans, PBGC proposes to retain the current premium due date—the 15th day of the tenth month that begins on or after the first day of the premium payment year (October 15th for calendar-year plans)—for both flat- and variable-rate premiums. With rare exceptions, these plans will perform valuations as of the first day of the premium payment year, and in most cases should be able to calculate UVBs by the current due date. However, in recognition of the possibility that circumstances might make a final UVB determination by the due date difficult or impossible, PBGC proposes to permit estimated VRP filings and to provide a penalty-free "true-up" period to correct an erroneous VRP estimate.

Under this provision, the VRP penalty would be waived for a period of time after the VRP due date if, by the VRP due date, the plan administrator submits an estimate of the VRP that meets certain requirements and pays the estimated amount. The waiver of the penalty would cover the period from the VRP due date until the small-plan due date or, if earlier, the filing of the final VRP. Interest would not be suspended; if the VRP estimate fell short of the correct amount, interest would accrue

on the amount of the underpayment from the date when the payment was due to the date the shortfall was paid, just as with the existing "safe harbor" rule for large plans' flat-rate premium payments.

The requirements for the VRP estimate would be that it be based on (1) a final determination of the market value of the plan's assets and (2) a reasonable estimate of the plan's premium funding target for the premium payment year that takes into account the most current data available to the plan's enrolled actuary and is determined in accordance with generally accepted actuarial principles and practices. The estimate of the premium funding target would have to be certified by the enrolled actuary and, like other premium information filed with PBGC, would be subject to audit. PBGC needs a good estimate of its VRP income for inclusion in its annual report, which is prepared during October (because its fiscal year ends September 30), when most plans (those with calendar plan years) submit VRP filings. Thus, it is important to have assurance that the estimate of the premium funding target has been prepared in good faith.

Since this penalty relief is based on the plan's reporting a final figure for the value of assets by the VRP due date, the relief would be lost if there were a mistake in the assets figure so reported, whether the mistaken figure was lower or higher than the true figure. PBGC would consider a request for an appropriate penalty waiver in such a situation and in acting on the request would consider such facts and circumstances as the reason for the mistake, whether assets were over- or understated, and, if assets were overstated, the extent of the overstatement.

Large Plans

The due date and penalty structure for "large" plans would be the same as for "mid-size" plans except that the early due date for the flat-rate premium under the existing regulation would be retained, along with the related "safe harbor" penalty rules. However, there would be a change in the "safe harbor" rules to accommodate the unlikely event that a plan might be in the small-plan category for one year but in the large-plan category for the next year. Under §§ 4007.8(f) and (g)(2)(ii) of the existing premium payment regulation, a plan may be entitled to safe harbor relief if its flat-rate filing is consistent with its reported participant count for the prior plan year, even if the reported count is later determined to be wrong. But under

the new rules, a plan that is small for one year and large for the next year would not have to report its participant count for the first year until after the flat-rate due date for the second year. Thus, to get the benefit of these special safe-harbor rules, a plan in such circumstances would have to make its

final filing for the first year two months before it was due. To alleviate this problem, PBGC proposes to provide safe-harbor relief for any plan whose flat-rate due date for the plan year preceding the premium payment year is later than the large-plan flat-rate due date for the premium payment year.

Due Date Table

The following table shows the relevant premium due dates for small, mid-size, and large calendar year plans (as described above) for the 2008 premium payment year:

	Small plans (under 100 participants)	Mid-size plans (100–499 participants)	Large plans (500 or more participants)
Flat-rate premium due	April 30, 2009 ...	October 15, 2008	February 29, 2008 See flat-rate premium safe harbor rules.
Flat-rate premium reconciliation due	N/A	N/A	October 15, 2008.
Variable-rate premium due	April 30, 2009 ...	October 15, 2008 Estimate may be filed and paid. See rules on correcting VRP without penalty.	October 15, 2008 Estimate may be filed and paid. See rules on correcting VRP without penalty.
Latest VRP penalty starting date. If certain conditions are met, penalty is waived until this date or, if earlier, the date the final VRP is filed.	N/A	April 30, 2009	April 30, 2009.

Special Variable-Rate Premium Rules

The existing premium rates regulation includes a number of special “exemption” or “relief” rules for VRP filers. One of these—the full-funding limit exemption, which was created by statute—has been eliminated by PPA 2006. Three others—created by PBGC regulation in 1988—have lost their justification, as explained below, and PBGC proposes to eliminate them as well. PBGC is also introducing two new “relief” rules.

The three regulatory special rules to be eliminated are (1) the rule that a plan with fewer than 500 participants for the premium payment year is exempt from reporting its VRP information if the plan has no UVBs (the “small well-funded plan rule”), (2) the rule that a plan with 500 or more participants may report (and compute its VRP on the basis of) accrued rather than vested benefits (the “large plan accrued benefit rule”), and (3) the rule that a plan may value benefits using the funding interest rate rather than the variable-rate premium interest rate if the funding rate is less than the premium rate (the “funding interest rate rule”). All three represent compromises between the need for accuracy in the determination of the VRP and the reporting of VRP data on the one hand and the need to reduce the burden of compliance on the other.

PBGC needs accurate data about UVBs and assets—now as in 1988—to verify the correctness of the reported VRP and for financial projections. But whereas the cost of determining this information 20 years ago could be very significant, because much actuarial valuation work was done using hand calculators and tables of factors, valuations are now

computerized and thus cost less. PBGC’s need for accurate data now outweighs the burden of determining and reporting the data. The elimination of these three special rules reflects that change in the balance between need and burden. Furthermore, both the “large plan accrued benefit rule” and the “funding interest rate rule” overstate UVBs and are used by very few plans—fewer than three dozen plans used each of these two special rules for the 2004 filing year (the last year for which data are available).

In addition, one of the two new “relief” rules that PBGC is introducing—the new alternative premium funding target provision discussed above—would provide relief for filers that might otherwise have used any of these three special rules. The alternative premium funding target provision permits the use of funding rates for premium purposes (like the “funding interest rate rule”) without the need for a comparison of rates (albeit with a requirement for a five-year commitment). And by using the alternative premium funding target provision, plans that might have used the “large plan accrued benefit rule” or the “small well-funded plan rule” may be able to base premium reporting on figures that are computed for and included in the annual report (Form 5500 series).

PBGC’s second new “relief” rule—in addition to the alternative premium funding target provision—is a reporting relief provision for certain small-employer plans. Section 405 of PPA 2006 caps the VRP for certain plans of small employers, a provision that is the subject of another PBGC rulemaking proceeding. This proposed rule would

exempt plans that qualify for the VRP cap and pay the full amount of the cap from determining or reporting UVBs.

Meaning of “Vested”

As discussed above, the determination of UVBs—under pre-PPA law as well as under PPA 2006—requires that only vested benefits be taken into account. PBGC believes that there is some uncertainty among pension practitioners as to the meaning of the term “vested” as used in ERISA section 4006(a)(3)(E). With a view to reducing uncertainty and promoting consistency in the VRP determination process, PBGC proposes to explain—for premium purposes only—when certain benefits are considered vested.

The proposal would specify two circumstances that do not prevent a benefit of a participant from being vested for premium purposes. One circumstance is that the benefit is not protected under Code section 411(d)(6) and thus may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status). PBGC considers such a benefit to be vested (if the other conditions of entitlement have been met) so long as the benefit has not actually been eliminated or reduced. The other circumstance—applicable to certain benefits payable upon a participant’s death—is that the participant is living. The benefits to which this would apply are (1) a qualified pre-retirement survivor annuity, (2) a post-retirement survivor annuity such as the annuity paid after a participant’s death under a joint and survivor or certain and continuous option, and (3) a benefit that returns a participant’s accumulated

mandatory employee contributions. PBGC considers such benefits to be vested (if the other conditions of entitlement have been met) notwithstanding that the participant is alive.

Recordkeeping and Audits

PBGC proposes to clarify and strengthen its rules on recordkeeping and audits. Most of the changes simply reflect existing recordkeeping and audit practices.

In describing the premium records to be kept, the current premium payment regulation mentions explicitly only those prepared by enrolled actuaries and insurance carriers. The proposal broadens this to include plan sponsors and employers required to contribute to a plan for their employees and clarifies, with a list of examples of relevant records, that PBGC interprets the term "records" broadly. Similarly, the proposal refers explicitly to records supporting the amount of premiums that were *required* to be paid and the premium-related information that was *required* to be reported (rather than just what was actually paid or reported). Where a premium or premium-related information is determined through the use of a manual or automated system, the proposal allows PBGC to require that the operation of the system be demonstrated so that its effectiveness, and the reliability of the results produced, can be assessed. In addition, in situations where plan records are deficient, the proposal broadens the categories of data on which PBGC may rely to establish the amount of premiums due to include not just participant count data but UVB data.

The proposal also makes clear that the 45 days permitted for producing records under § 4007.10(c) applies to records sent to PBGC, not to records audited on-site (which PBGC expects to be produced much more promptly). And PBGC proposes to broaden the circumstances in which it can require faster submission of records. The existing regulation limits such circumstances to those where collection of money may be jeopardized. This would be changed to authorize shorter response times where the interests of PBGC may be prejudiced by delay—such as where PBGC has reason to fear that records might be destroyed or manipulated.

Miscellaneous Provisions

Plans Not Immediately Subject to New Funding Rules

Sections 104, 105, and 106 of PPA 2006 defer the effective date of the

funding amendments for certain plans described in those sections, which in general deal with plans of cooperatives, plans affected by settlement agreements with PBGC, and plans of government contractors. Section 402 of PPA 2006 applies special funding rules to certain plans of commercial passenger airlines and airline caterers. None of these provisions affects the applicability of the amendments to ERISA section 4006 regarding the determination of the VRP. The proposed rule provides explicitly that plans in this small group must determine UVBs in the same manner as all other plans.

New and Newly Covered Plans

The proposed rule would eliminate confusing language in the existing regulations that raised questions about the determination of due dates, participant count dates, and premium proration for new and newly covered plans in certain circumstances. The new language would make clear that the first day of a new plan's first plan year for premium purposes is the effective date of the plan. This change will obviate the need for plan administrators to choose between the effective date and the adoption date as the first day of the plan year for premium filing.

Electronic Filing Requirement

Effective July 1, 2006, PBGC amended its regulations to require that annual premium filings be made electronically (71 FR 31077, June 1, 2006). (Exemptions from the e-filing requirement may be granted for good cause in appropriate circumstances.) In order for PBGC's premium processing systems to work effectively and efficiently, information must be received in an electronic format compatible with those systems; the burden of reformatting information received on paper or in other incompatible formats is significant, and the reformatting process gives rise to data errors. PBGC therefore proposes to provide explicitly in the premium payment regulation that, in the absence of an exemption, premium filing on paper or in any other manner other than the prescribed electronic filing method does not satisfy the requirement to file. Thus, a penalty under ERISA section 4071 could be assessed for the period from the due date of the premium filing until it was made electronically, even if a timely paper filing was made.

Billing "Grace Period" for Interest

PBGC proposes to consolidate paragraphs (b) and (c) of § 4007.7, both of which deal with the "grace period" for interest on premium underpayments

where a bill is paid within 30 days. No substantive change is intended.

VRP Rate

ERISA section 4006(a)(3)(E)(ii) sets the variable-rate premium at \$9 for each \$1,000 (or fraction thereof) of UVBs. Section 4006.3(b) of the existing premium rates regulation omits the phrase "(or fraction thereof)." The requirement is made clear in PBGC's premium instructions, but PBGC proposes to add this phrase to the regulatory text.

Pre-1996 Penalty Accrual Rules

PBGC proposes to eliminate the pre-1996 penalty accrual rules as anachronistic.

Other Changes

The proposal includes a number of clarifying and editorial changes.

Applicability

The regulatory changes made by this rule would apply to plan years beginning after 2007.

Compliance With Rulemaking Guidelines

E.O. 12866

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

- There is ambiguity in ERISA section 4006(a)(3)(E) regarding the date as of which UVBs are to be measured. This problem is significant because, unless the statutory ambiguity is resolved, it will be unclear what date UVBs are to be measured as of.

- The statute lacks clarity and specificity in describing how UVBs are calculated. This problem is significant because, unless clarity and specificity are provided, it will be unclear how to compute UVBs.

- The statute does not expressly provide for an alternative premium funding target as described above. This problem is significant because the standard premium funding target provided for in the statute is more burdensome to use than the alternative premium funding target described above without generating significantly different premium revenue than the less burdensome alternative premium funding target.

- PBGC's existing premium due date and penalty rules do not accord well with the new rules for the date as of which and manner in which UVBs are to be determined. This problem is significant because, without changes in the due date and penalty rules, some plans may experience difficulties in paying premiums timely and without late payment penalties.

- Some existing PBGC VRP relief rules are anachronistic and some new relief provisions are warranted by statutory changes. This problem is significant because the outmoded relief rules detract from accuracy in determining the VRP and deprive PBGC of VRP data without significantly reducing burden, while statutory changes have made it possible to grant new relief without significant adverse consequences for the PBGC insurance program.

- There is uncertainty as to the meaning of the term "vested" that is used in the statute to describe benefits taken into account in determining the VRP. This problem is significant because, without improved clarity in the meaning of "vested" as applied to VRP determinations, those determinations may be inconsistent.

- PBGC's current recordkeeping and audit rules do not match current recordkeeping and audit practices in scope and specificity, and provide relatively narrow circumstances in which PBGC may require expedited submission of records. This problem is significant because inadequate recordkeeping and audit rules could compromise PBGC's ability to enforce the premium rules in the statute and PBGC's regulations thereunder.

- PBGC's existing premium payment regulation does not provide explicitly that, in the absence of an exemption, premium filing on paper or in any other manner other than the prescribed electronic filing method does not satisfy the requirement to file. This problem is significant because, in the absence of an explicit statement, filers might believe they had a basis for taking the position that penalties for late filing would not apply if they timely filed on paper or in some other non-approved manner.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

Most of the amendments would implement statutory changes made by Congress. They would provide procedures for calculating, substantiating, and paying the premiums prescribed by statute and impose no significant burden beyond the burden imposed by statute. To the extent that this rule would make changes that are outside the explicit scope of the statute, they would affect primarily the requirement to perform and manner of performing VRP calculations. When the VRP provisions were added to PBGC's regulations nearly 20 years ago, these calculations were mostly done using actuarial tables and hand calculators. Today they are almost universally done using high-memory, high-speed computers. The VRP calculations parallel funding calculations that must be done independently of PBGC premium requirements. Thus, the VRP calculations can be done for the most part by plugging in different parameters (such as interest rates) to computer programs that are used for funding purposes. The incremental cost of such calculations for entities of any size is insignificant. Not including a computation option like the existing alternative computation method (ACM) in the new rules would not significantly affect compliance costs because such an option would itself be complex and thus burdensome to use and because a simplified computation method is no longer needed in the current environment of computerized actuarial computations.

Changes that would tend to increase compliance costs (*e.g.*, elimination of the VRP exemption for well-funded small plans) would be offset by changes tending to reduce compliance costs (*e.g.*, the introduction of the reporting exemption for plans of small employers paying the maximum capped VRP).

The shift from prior-year to current-year data and the deferral of the due date for small plans (those with fewer than 100 participants) should not affect the cost of compliance. Under existing rules, UVBs are determined as of the end of the prior year (or in some cases the beginning of the current year) and the VRP is due 9½ months later. Under the new rules, UVBs would be determined as of the UVB valuation date, which for most small plans may be any day in the current year. For plans that choose a valuation date at the beginning of the year, the VRP would now be due 16 months later. For those that choose a valuation date at the end of the year, the VRP would now be due 4 months later. For a plan that chooses a mid-year valuation date, the VRP

would be due 10 months later, providing about the same time for data-gathering and computations as under the existing rules. But even a 4-month period between the valuation date and the due date should be adequate for the data-gathering and UVB computations of small plans, and the change in timing should not affect the cost of compliance.

PBGC believes that the changes to the recordkeeping requirements in general simply codify existing practices. The changes to the audit rules will not affect a significant number of plans of any size.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. The OMB control number for this collection of information is 1212-0009. Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202-326-4040.

PBGC is proposing the following changes to the information requirements under the premium rates and premium payment regulations (except for 2008 estimated flat-rate premium filings, as noted below):

- Filers will be required to include in the addresses of the plan sponsor and plan administrator the countries where the addresses are located (if other than the United States).

- Filers will no longer be required to report coverage status.

- Filers will be required to provide an e-mail address for the plan contact.

- Filers will no longer be required to provide information on participant notices under ERISA section 4011 (that requirement having been eliminated by PPA 2006).

- Filers will be required to report if they qualify for premium proration (for a short plan year) and if so, to report the number of months in the proration period. Proration will be reported separately from credits. (This change will not apply to 2008 estimated flat-rate premium filings.)

- Filers will be required to report plan size (small, mid-size, or large) based on the prior year's participant count (or report that the plan is new).

- Filers will have an opportunity to make alternative premium funding target elections as part of the premium filing.

- Filers will be required to report the participant count date.

- Most existing VRP information items will be eliminated in connection

with the implementation of the new VRP rules. Items retained will be the identification of any applicable VRP exemption and the amount of UVBs.

- New VRP data required will be qualification for the VRP cap for certain plans of small employers, the UVB valuation date, the premium funding target as of the UVB valuation date, the premium funding target method (standard or alternative), whether the reported premium funding target is an estimate, the segment rates used to compute the premium funding target (or indication that the full yield curve was used), the market value of assets as of the UVB valuation date, the (unprorated) VRP cap (for plans eligible for the cap), and the (unprorated) uncapped VRP (for plans not eligible for the cap).

- For a final filing, filers will be required to report the date and type of event that results in the cessation of the filing obligation.

- The existing item on transfers from disappearing plans will be replaced by two new items: Information about transfers from other plans (whether disappearing or not) and information about transfers to other plans. (This change will not apply to 2008 estimated flat-rate premium filings.)

- For frozen plans, filers will be required to identify the type of freeze and its effective date.

- For amended filings, filers will be required to report any change in the beginning and ending dates of the plan year being reported and any change in the plan identifying numbers being reported from those in the original filing.

PBGC needs this information to identify the plan for which premiums are paid to PBGC, to verify the determination of the premium, and to help the PBGC determine the magnitude of its exposure in the event of plan termination.

PBGC estimates that it will receive annual premium filings from about 28,409 plan administrators each year and that the total annual burden of the collection of information will be about 9,002 hours and \$47,037,645.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. Although comments may be submitted through July 30, 2007, the Office of Management and Budget requests that comments be received on

or before July 2, 2007 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;

- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

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

For the reasons given above, PBGC proposes to amend 29 CFR parts 4006 and 4007 as follows.

PART 4006—PREMIUM RATES

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

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

2. In § 4006.2, the definition of “short plan year” is revised, and four new definitions are added, to read as follows:

§ 4006.2 Definitions.

* * * * *

Participant count of a plan for a plan year means the number of participants in the plan on the participant count date of the plan for the plan year.

Participant count date of a plan for a plan year means the date provided for in § 4006.5(c), (d), or (e) as applicable.

Premium funding target has the meaning described in § 4006.4(b)(1).

* * * * *

Short plan year means a plan year of coverage that is shorter than a normal plan year.

UVB valuation date of a plan for a plan year means the plan's funding valuation date for the plan year determined in accordance with ERISA section 303(g)(2).

3. In § 4006.3:

a. Paragraph (a) introductory text is amended by removing the words “last

day of the plan year preceding the premium payment year,” and adding in their place the words “participant count date”.

b. Paragraph (b) is amended by removing the words “\$1,000 of a single-employer plan's unfunded vested benefits” and adding in their place the words “\$1,000 (or fraction thereof) of a single-employer plan's unfunded vested benefits for the premium payment year”.

4. Section 4006.4 is revised to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

(a) *In general.* Except as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits for the premium payment year is the excess (if any) of the plan's premium funding target for the premium payment year (determined under paragraph (b) of this section) over the fair market value of the plan's assets for the premium payment year (determined under paragraph (c) of this section). Unfunded vested benefits for the premium payment year must be determined as of the plan's UVB valuation date for the premium payment year, based on the plan provisions and the plan's population as of that date. The determination must be made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Premium funding target*—(1) In general. A plan's premium funding target is its standard premium funding target under paragraph (b)(2) of this section or, if an election to use the alternative premium funding target under § 4006.5(g) is in effect, its alternative premium funding target.

(2) *Standard premium funding target.* A plan's standard premium funding target under this section is the plan's funding target as determined under ERISA section 303(d) (or 303(i), if applicable) for the premium payment year using the same assumptions that are used for funding purposes, except that—

(i) Only vested benefits are taken into account, and

(ii) The interest rates to be used are the segment rates for the month preceding the month in which the premium payment year begins that are determined in accordance with ERISA section 4006(a)(3)(E)(iv). These are the rates that would be determined under ERISA section 303(h)(2)(C) if ERISA section 303(h)(2)(D) were applied by using the monthly yields for the month preceding the month in which the premium payment year begins on

investment grade corporate bonds with varying maturities and in the top 3 quality levels rather than the average of such yields for a 24-month period.

(c) *Value of assets.* The fair market value of a plan's assets under this section is determined in the same manner as for funding purposes under ERISA section 303(g)(3) and (4), except that averaging as described in ERISA section 303(g)(3)(B) must not be used and prior year contributions are included only to the extent received by the plan by the date of a premium filing. Contribution receipts must be accounted for as described in ERISA section 303(g)(4), using effective interest rates determined under ERISA section 303(h)(2)(A) (not rates that could be determined based on the segment rates described in paragraph (b)(2) of this section).

(d) "*Vested.*" For purposes of ERISA section 4006(a)(3)(E), this part, and part 4007 of this chapter, a benefit otherwise vested does not fail to be vested merely because of the following circumstances:

- (1) The circumstance that the participant is living, in the case of the following death benefits:
 - (i) A qualified pre-retirement survivor annuity (as described in ERISA section 205(e)),
 - (ii) A post-retirement survivor annuity that pays some or all of the participant's benefit amount for a fixed or contingent period (such as a joint and survivor annuity or a certain and continuous annuity), and
 - (iii) A benefit that returns the participant's accumulated mandatory employee contributions (as described in ERISA section 204(c)(2)(C)).

(2) The circumstance that the benefit may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status).

(e) *Rules for which new funding rules are not immediately effective.* In the case of a plan to which the funding rules as amended by subtitles A and B of Title I of the Pension Protection Act of 2006 do not apply for a plan year, unfunded vested benefits must be determined for that plan year as if those funding rules did apply.

5. In § 4006.5:

a. Paragraph (a) introductory text is amended by removing the words "paragraphs (a)(1)–(a)(5)" and adding in their place the words "paragraphs (a)(1)–(a)(3)"; and by removing the words "determine its unfunded vested benefits" and adding in their place the words "determine or report its unfunded vested benefits".

b. Paragraphs (a)(1) and (a)(5) are removed.

c. Paragraphs (a)(2), (a)(3), and (a)(4) are redesignated as paragraphs (a)(1), (a)(2), and (a)(3) respectively.

d. Redesignated paragraph (a)(1) is amended by removing the words "*benefit liabilities*" from the heading and adding in their place the word "participants"; by removing the word "did" and adding in its place the word "does"; and by removing the words "last day of the plan year preceding the premium payment year" and adding in their place the words "UVB valuation date".

e. Redesignated paragraph (a)(2) is amended by removing the figures "412(i)" where they appear once in the heading and once in the body of the paragraph and adding in their place the figures "412(e)(3)"; by removing the word "was" and adding in its place the word "is"; and by removing the words "last day of the plan year preceding the premium payment year" and adding in their place the words "UVB valuation date".

f. Redesignated paragraph (a)(3)(ii) is amended by removing the words "last day of the plan year preceding the premium payment year" and adding in their place the words "UVB valuation date".

g. The heading of paragraph (e) is amended by removing the words "*Special determination date rule for*" and adding in their place the words "*Participant count date*;"

h. Paragraph (e)(2) is amended by removing the words "paragraph (e)(2) if" and adding in their place the words "paragraph (e)(2) for a plan year if".

i. Paragraph (e)(2)(ii) is amended by removing the words "on the first day of the plan's premium payment year" and adding in their place the words "at the beginning of the plan year".

j. Paragraph (f) introductory text is amended by removing the words "year as described" and adding in their place the words "year described".

k. Paragraphs (b), (c), (d), (e)(1), and (f)(1) are revised, and paragraph (g) is added, to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(b) *Reporting exemption for plans paying capped variable-rate premium.* A plan that qualifies for the variable-rate premium cap described in ERISA section 4006(a)(3)(H) is not required to determine or report its unfunded vested benefits under § 4006.4 if it reports that it qualifies for the cap and pays a variable-rate premium equal to the amount of the cap.

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant

count date of a plan for a plan year is the last day of the prior plan year.

(d) *Participant count date; new and newly-covered plans.* The participant count date of a new plan or a newly-covered plan for a plan year is the first day of the plan year. For this purpose, a new plan's first plan year begins on the plan's effective date.

(e) *Participant count date; certain mergers and spinoffs.* (1) The participant count date of a plan described in paragraph (e)(2) of this section for a plan year is the first day of the plan year.

* * * * *

(f) *Proration for certain short plan years.* * * *

(1) *New or newly covered plan.* A new plan becomes effective less than one full year before the beginning of its second plan year, or a newly-covered plan becomes covered on a date other than the first day of its plan year. (Cessation of coverage before the end of a plan year does not give rise to proration under this section.)

* * * * *

(g) *Alternative premium funding target.* A plan's alternative premium funding target is the vested portion of the plan's funding target under ERISA section 303(d)(1) that is used to determine the plan's minimum contribution under ERISA section 303 for the premium payment year, that is, the amount that would be determined under ERISA section 303(d)(1) if only vested benefits were taken into account. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target must specify the first plan year to which it applies and must be filed before the end of that plan year. The first plan year to which the election applies must begin at least five years after the first plan year to which a revocation of a prior election applied. The election will be effective—

(i) For the plan year for which made and for all plan years that begin less than five years thereafter, and

(ii) For all succeeding plan years until the first plan year to which a revocation of the election applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target must specify the first plan year to which it applies and must be filed before the end of that plan year. The first plan year to which the revocation applies must begin at least five years after the first plan year to which the election applied.

6. In paragraph (c) of § 4006.6:

a. Example 1 is amended by removing the words “July 1, 2000” and adding in their place the words “July 1, 2008”; by removing the words “December 31, 2000” where they appear twice and adding in their place the words “December 31, 2008”; by removing the words “snapshot date” and adding in their place the words “participant count date”; and by removing the words “2001 premium” where they appear twice and adding in their place the words “2009 premium”.

b. Example 2 is amended by removing the words “February 1, 2002” where they appear twice and adding in their place the words “February 1, 2010”; by removing the words “July 1, 2000” and adding in their place the words “July 1, 2008”; by removing the words “July 1, 2001” and adding in their place the words “July 1, 2009”; by removing the words “December 31, 2002” and adding in their place the words “December 31, 2010”; by removing the words “snapshot date” and adding in their place the words “participant count date”; and by removing the words “2003 premium” where they appear twice and adding in their place the words “2011 premium”.

c. Example 3 is amended by removing the words “January 1, 2004” and adding in their place the words “January 1, 2012”; by removing the words “December 30, 2005” where they appear twice and adding in their place the words “December 30, 2013”; by removing the words “January 9, 2006” and adding in their place the words “January 9, 2014”; by removing the words “December 31, 2005” and adding in their place the words “December 31, 2013”; by removing the words “snapshot date” and adding in their place the words “participant count date”; and by removing the words “2006 premium” where they appear twice and adding in their place the words “2014 premium”.

d. Example 4 is amended by removing the words “January 1, 2006” and adding in their place the words “January 1, 2014”; by removing the words “December 31, 2005” and adding in their place the words “December 31,

2013”; and by removing the words “2006 premium” and adding in their place the words “2014 premium”.

PART 4007—PAYMENT OF PREMIUMS

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

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

8. In § 4007.2:

a. Paragraph (a) is amended by removing the word “insurer,”; and by removing the words “multiemployer plan.”.

b. Paragraph (b) is amended by removing the words “participant, premium payment year” and adding in their place the words “participant, participant count, premium funding target, premium payment year”.

9. In § 4007.3:

a. The first three sentences (ending with the words “prescribed in the instructions.”) of the text of § 4007.3 are designated as paragraph (a), and the remainder of the text (beginning with the words “Information must be filed electronically”) is designated as paragraph (b).

b. Newly designated paragraph (a) is amended by adding the heading “In general.”; and by removing the words “estimation, declaration, reconciliation, and payment” and adding in their place the words “estimation, determination, declaration, and payment”.

c. Newly designated paragraph (b) is amended by adding the heading “Electronic filing.”; by removing the words “requirement to file electronically does not apply” and adding in their place the words “requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply”; and by adding two new sentences to the end of the paragraph to read as follows:

§ 4007.3 Filing requirement; method of filing.

(b) *Electronic filing.* * * * Unless an exemption applies, filing on paper or in any other manner other than by a prescribed electronic filing method does not satisfy the requirement to file. Failure to file electronically as required is subject to penalty under ERISA section 4071.

10. In § 4007.7, paragraph (c) is removed, and paragraph (b) is revised to read as follows:

§ 4007.7 Late payment interest charges.

* * * * *

(b) With respect to any PBGC bill for a premium underpayment and/or

interest thereon, interest will accrue only until the date of the bill, provided the premium underpayment and interest billed are paid within 30 days after the date of the bill.

11. In § 4007.8:

a. Paragraph (a) introductory text is amended by adding at the end of the paragraph the words “The penalty rate is—”.

b. Paragraph (a)(1) introductory text and paragraph (a)(2) are removed, and paragraphs (a)(1)(i) and (a)(1)(ii) are redesignated as paragraphs (a)(1) and (a)(2) respectively.

c. Paragraph (f) is amended by removing the figures “§ 4007.11(a)(2)(iii)” and adding in their place the figures “§ 4007.11(a)(3)(iii)”; by removing the words “filing is due if fewer” and adding in their place the words “filing is due if either—Fewer”; by removing the period at the end of paragraph (f) and adding in its place “, or”; and by designating as paragraph (f)(1) the portion of the text of paragraph (f) that begins with the words “Fewer than 500”.

d. Paragraph (i) is amended by removing the figures “§ 4007.11(a)(2)(iii)” and adding in their place the figures “§ 4007.11(a)(3)(iii)”.

e. New paragraphs (f)(2) and (j) are added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(f) Safe-harbor relief for certain large plans. * * *

* * * * *

(2) The due date for paying the flat-rate premium for the plan year preceding the premium payment year is later than the due date for paying the flat-rate premium for the premium payment year.

* * * * *

(j) *Variable-rate premium penalty relief.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(ii) or (a)(3)(iv). PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(2)(i) or (a)(3)(ii)—

(1) The plan administrator reports—

(i) The fair market value of the plan’s assets for the premium payment year, and

(ii) An estimate of the plan’s premium funding target for the premium payment year that is certified by an enrolled actuary to be a reasonable estimate that

takes into account the most current data available to the enrolled actuary and that has been determined in accordance with generally accepted actuarial principles and practices; and

(2) The plan administrator pays at least the amount of variable-rate premium determined from the value of assets and estimated premium funding target so reported.

12. In § 4007.10:

a. Paragraph (c)(3) is amended by removing the words “that collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized” and adding in their place the words “that the interests of PBGC may be prejudiced by a delay in the receipt of the information (e.g., where collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized)”.

b. Paragraphs (a)(1), (b), and (c)(1) are revised, and paragraph (a)(3) is added, to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* The plan administrator must retain, for a period of six years after the premium due date, all plan records that are necessary to establish, support, and validate the amount of any premium required to be paid and any information required to be reported (“premium-related information”) under this part and part 4006 of this chapter and under PBGC’s premium filing instructions. 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 support and demonstrate the calculation of unfunded vested benefits.

* * * * *

(3) *Records* (i) Records that must be retained pursuant to paragraph (a)(1) of this section include, but are not limited to, records prepared by the plan administrator, a plan sponsor, an employer required to contribute to the plan with respect to its employees, an enrolled actuary performing services for the plan, or an insurance carrier issuing any contract to pay benefits under the plan.

(ii) For purposes of this section, “records” include, but are not limited to, plan documents; participant data records; personnel and payroll records; actuarial tables, worksheets, and reports; records of computations, projections, and estimates; benefit statements, disclosures, and applications; financial and tax records; insurance contracts; records of plan procedures and practices; and any other

records, whether in written, electronic, or other format, that are relevant to the determination of the amount of any premium required to be paid or any premium-related information required to be reported.

(iii) When a record to be produced for PBGC inspection and copying exists in more than one format, it must be produced in the format specified by PBGC.

(b) *PBGC audit*—(1) *In general.* In order to determine the correctness of any premium paid or premium-related information reported or to determine the amount of any premium required to be paid or any premium-related information required to be reported, PBGC may—

(i) Audit any premium filing,

(ii) Inspect and copy any records that are relevant to the determination of the amount of any premium required to be paid and any premium-related information required to be reported, including (without limitation) the records described in paragraph (a) of this section, and

(iii) Require disclosure of any manual or automated system used to determine any premium paid or premium-related information reported, and demonstration of its operation in order to permit PBGC to determine the effectiveness of the system and the reliability of information produced by the system.

(2) *Deficiencies found on audit.* If, upon audit, the PBGC determines that a premium due under this part was underpaid, late payment interest and penalty charges will apply as provided for in this part. If, upon audit, PBGC determines that required information was not timely and accurately reported, a penalty may be assessed under ERISA section 4071.

(3) *Insufficient records.* In determining the premium due, if, in the judgment of the PBGC, the plan’s records fail to establish the participant count or (for a single-employer plan) the plan’s unfunded vested benefits for any premium payment year, the PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the participant count and/or unfunded vested benefits for premium computation purposes.

(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 promptly 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). If PBGC requests in writing that records retained pursuant to paragraph (a) of this section, or information in such records, be submitted to PBGC, the plan administrator must submit the requested materials to PBGC either electronically or by hand, mail, or commercial delivery service within 45 days of the date of PBGC’s request therefor, or by a different time specified in the request.

* * * * *

13. In § 4007.11, paragraphs (a), (b), and (c) are revised to read as follows:

§ 4007.11 Due dates.

(a) *In general.* The premium filing due date for small plans is prescribed in paragraph (a)(1) of this section, the premium filing due date for mid-size plans is prescribed in paragraph (a)(2) of this section, and the premium filing due dates for large plans are prescribed in paragraph (a)(3) of this section.

(1) *Small plans.* If the plan had fewer than 100 participants for whom premiums were payable for the plan year preceding the premium payment year, the due date is the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(2) *Mid-size plans.* If the plan had 100 or more but fewer than 500 participants for whom premiums were payable for the plan year preceding the premium payment year:

(i) The due date is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(ii) If the premium funding target is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing and any required premium payment must be made by the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(3) *Large plans.* If the plan had 500 or more participants for whom premiums were payable for the plan year preceding the premium payment year:

(i) The due date for the flat-rate premium required by § 4006.3(a) of this chapter is the last day of the second full calendar month following the close of the plan year preceding the premium payment year.

(ii) The due date for the variable-rate premium required by § 4006.3(b) of this chapter for single-employer plans is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(iii) If the participant count is not known by the date specified in

paragraph (a)(3)(i) of this section, a reconciliation filing and any required premium payment must be made by the date specified in paragraph (a)(3)(ii) of this section.

(iv) If the premium funding target is not known by the date specified in paragraph (a)(3)(ii) of this section, a reconciliation filing and any required premium payment must be made by the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(b) *Due dates for plans that change plan years.* For any plan that changes its plan year, the due date or due dates for the short plan year are as specified in paragraph (a)(1), (a)(2), (a)(3), or (c) of this section (whichever applies). For the plan year that follows a short plan year, each due date is the later of—

(i) The applicable due date specified in paragraph (a)(1), (a)(2), or (a)(3) of this section, or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the due date for the first plan year of coverage of any new plan or newly covered plan is the latest of—

(1) The last day of the sixteenth full calendar month that began on or after the first day of the premium payment year (the effective date, in the case of a new plan),

(2) 90 days after the date of the plan's adoption, or

(3) 90 days after the date on which the plan became covered by title IV of ERISA.

* * * * *

Issued in Washington, DC, this 24th day of May, 2007.

Vincent K. Snowbarger,

Interim Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7-10412 Filed 5-30-07; 8:45 am]

BILLING CODE 7709-01-P

[REDACTED]

[REDACTED]

[REDACTED]