

inclusive; on which Part 1 of the Accomplishment Instructions of Fokker Service Bulletins F27/57-68 and F27/57-70 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent loose or missing rivets at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Except as provided by paragraph (c) of this AD: Prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-74, dated November 15, 1994.

(1) If no missing rivet head and no loose rivet is detected, no further action is required by paragraph (a) of this AD.

(2) If any missing rivet head or loose rivet is detected, prior to further flight, repair the affected rib-to-stringer connection, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Prior to the accumulation of 10,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, replace rivets having part number (P/N) MS20600AD4W2 with new rivets having P/N CR3553P4 in all applicable rib-to-stringer connections of the upper and lower wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-74, dated November 15, 1994.

(c) Airplanes on which the replacement required by paragraph (b) of this AD is performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the inspection required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 18, 1996.

Stewart R. Miller,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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BILLING CODE 4910-13-P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4001, 4043, 4065

RIN 1212-AA80

#### Reportable Events; Annual Report

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation is proposing amendments to its reportable events regulation. The Retirement Protection Act of 1994 made significant changes to the reportable events requirements, including adding four new events. This proposed rule addresses the RPA changes and provides extensions of time and waivers for certain filings. The rule reflects the consensus of a negotiated rulemaking committee consisting of representatives of employers, participants, pension practitioners, and the PBGC.

**DATES:** Comments must be received on or before September 23, 1996.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD).

## SUPPLEMENTARY INFORMATION:

### Background

Section 4043 of ERISA requires reporting to the PBGC of certain events that may indicate a need for the PBGC to take action to protect participants and the termination insurance program. RPA expanded section 4043 by adding four new reportable events involving: (1) a company ceasing to be a member of a plan's controlled group; (2) a group member liquidating; (3) a group member declaring an extraordinary dividend or redeeming stock above certain thresholds; or (4) a plan maintained by the group transferring 3 percent of its benefit liabilities outside the group.

RPA also extended the reporting obligation to contributing sponsors as well as plan administrators; imposed an advance reporting requirement in certain limited circumstances for the new and certain other reportable events; and provided that reportable event filings are confidential.

In developing this proposed regulation, the PBGC for the first time used a negotiated rulemaking committee. The committee, which first met in October 1995, is made up of PBGC representatives and 14 private parties representing the interests of large and small employers, participants, and pension practitioners. The committee's consensus recommendations are the basis for this proposed rule.

### Filing Obligation

When a reportable event occurs for a plan, the plan administrator and contributing sponsor must give the PBGC notice within 30 days after that person knows or has reason to know of the event (post-event notice). In the case of privately-held companies in controlled groups maintaining plans with over \$50 million in total underfunding and an overall funded percentage below 90 percent, the contributing sponsor must give 30 days advance notice of the four events added by RPA and any events added by the regulation.

If an event occurs for more than one plan in a controlled group, the reporting requirement applies to the contributing sponsor and, for post-event notice, the plan administrator of each plan. When more than one person is required to notify the PBGC of a reportable event, a filing by one of those persons is treated as a filing by all of them.

### Information Requirements

The regulation requires submission of general information (e.g., identifying information and a brief description of the event) for all reportable events and

specific information tailored to each event. The PBGC has developed optional reportable event forms that provide for reduced initial information filings. The PBGC may request additional information.

#### Post-Event Notice

##### *Active participant reduction:*

Reporting is required when the number of active participants drops below 80 percent of the number at the beginning of the current plan year or 75 percent of the number at the beginning of the prior year. The proposed regulation tests the reduction solely on a plan-by-plan basis, rather than (as under the existing regulation) on both a plan-by-plan and controlled group basis.

*Minimum funding payments and funding waivers:* The proposed regulation waives reporting for a missed minimum funding payment if full payment is made by the time the reportable event notice would ordinarily be due—30 days after the payment's due date. A separate reportable event notice continues to be unnecessary if a Form 200 is filed with respect to the same failure. Reporting is required without regard to the funding status of the plan. The existing requirement to report when a minimum funding waiver is granted is replaced by a requirement to report when a waiver application is filed.

*Inability to pay benefits when due:* Plans not subject to the liquidity requirement of section 412(m)(5) of the Internal Revenue Code (100 or fewer participants) must report if there is a current or projected inability to pay benefits. There is a projected inability if the plan's liquid assets are less than twice its disbursements for a quarter.

*Distribution to a substantial owner:* Reporting is required for certain distributions to a substantial owner. The threshold for reporting is raised from \$10,000 to the annual limit on benefits under Code section 415(b) (\$120,000 for 1996) or, if greater, one percent of plan assets.

*Change in contributing sponsor or controlled group:* Controlled group changes are reportable under the existing regulation only if they involve the contributing sponsor. RPA added a new reportable event for transactions that result in any person ceasing to be a member of the plan's controlled group. This event includes a transaction in which a plan is transferred from one controlled group to another.

*Liquidation:* Liquidations are reportable under the existing regulation only if the contributing sponsor is liquidating. RPA added liquidation of a controlled group member as a new statutory event.

*Extraordinary dividend or stock redemption:* RPA added a new reportable event related to extraordinary dividends (as defined in section 1059(c) of the Code) and stock redemptions. The negotiated rulemaking committee concluded that the reportable event rules and the extraordinary dividend rules in the Code were so different in purpose and structure that the cross-reference to the Code was unworkable. The regulation waives this statutory event and replaces it with a new event calling for notice when any member of the controlled group declares a dividend that exceeds the company's income (in the case of cash distributions) or 10 percent of the company's assets (in the case of non-cash distributions). The same thresholds are used for stock redemptions.

*Transfer of benefit liabilities:* Notice is required for a transfer of 3 percent or more of a plan's benefit liabilities outside the controlled group. No reporting is required if the transfer complies with section 414(l) of the Code using PBGC assumptions (the safe harbor under the section 414(l) regulations), if both the transferor and transferee plans are fully funded after the transfer using PBGC assumptions, if the transfer is a complete plan transfer, or if the transfer is a de minimis transfer under the section 414(l) regulations involving less than 3 percent of assets. The PBGC will consider, on a case-by-case or class basis, whether other assumptions may be the basis of a waiver.

*Loan default:* The regulation adds a new event requiring reporting of certain loan defaults on loans with outstanding balances of \$10 million or more. A default is reportable only if it results from a debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date), the lender accelerates the loan, or the debtor receives a written notice of default from the lender on account of specified circumstances—a drop in the debtor's cash reserves below an agreed-upon level, an unusual or catastrophic event experienced by the debtor, or a persisting failure by the debtor to attain agreed-upon performance levels. (The PBGC specifically invites comments on when such a failure is "persisting.") Reporting is waived if, among other things, the default is cured within a specified time period. The regulation also provides for several extensions, including ones keyed to time periods for correcting the default.

*Bankruptcy or similar settlement:* The current requirement to report bankruptcies is expanded to cover the

bankruptcy of any controlled group member. If the bankrupt member is not a contributing sponsor, the deadline for reporting is extended until 30 days after the person required to notify the PBGC has actual knowledge of the bankruptcy.

#### Advance Notice

Seven reportable events—controlled group change, liquidation, extraordinary dividend and stock redemption, transfer of benefit liabilities, application for minimum funding waiver, loan default, and bankruptcy or similar settlement—are subject to advance reporting requirements.

#### Waivers and Extensions

The existing regulation waives all reporting for the following events: tax-disqualification, Title I noncompliance, amendment decreasing benefits payable, termination or partial termination, and plan merger. The proposed regulation preserves these waivers, as well as the waiver for multiemployer plans.

For the other events, the regulation provides certain waivers and extensions. For many events, post-event reporting is waived if the plan for which the reportable event occurred meets one of the following funding tests: (1) The plan is not required to pay a variable rate premium; (2) the plan has less than \$1 million in unfunded vested benefits; (3) the plan has no unfunded vested benefits using the fair market value of assets, the 30-year Treasury rate, and specified mortality tables; or (4) the plan is at least 80 percent funded.

Plan funding is determined as of the same date used in determining the plan's variable rate premium for the year in which the reportable event occurs, generally the last day of the prior plan year. Because the information necessary to determine whether a funding test is met for the current year may not be available by the time the notice would be due, the regulation provides an extension for plans that met a funding test for the prior year until 30 days after the plan's variable rate premium filing is due for the current year.

Reporting is also waived if the companies involved are only a *de minimis* portion (either 5 or 10 percent, depending on the event) of the plan's controlled group. The regulation provides a number of waivers and extensions, including ones relating to foreign entities and several extensions that are keyed to other filing or reporting requirements (e.g., Form 5500).

For advance notice, the waivers and extensions relating to plan funding and foreign entities do not apply. De

minimis waivers apply for some events, but only at the 5 percent level. Small plan (500 or fewer participants) waivers apply for controlled group change and transfer of benefit liabilities. For certain events (application for minimum funding waiver, loan default, and bankruptcy), the deadline for reporting is extended to 10 days after the reportable event occurs.

The regulation provides that the PBGC may waive any reportable event requirement on a case-by-case or class basis.

#### Effective Date

Any new reportable events requirements in the final rule will be effective prospectively. The PBGC will treat any new waivers or extensions as if they had been in effect as of the effective date of the RPA amendments to section 4043 of ERISA. Accordingly, the PBGC does not intend to assess penalties or to pursue any other equitable or legal remedies with respect to any failure to meet a reportable event requirement to the extent reporting is waived or extended under the final rule.

#### Paperwork Reduction Act

The collection of information requirements in this proposed rule and the related forms and instructions have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. The collection of information requirements contained in the PBGC's existing regulation on reportable events were approved by the Office of Management and Budget under control number 1212-0013. The collection of information requirements contained in PBGC's existing regulation on notice of failure to make required contributions were approved under control number 1212-0041.

The PBGC needs the information so that it can take action to protect participants and the termination insurance program in appropriate cases. The PBGC estimates that it will take an average of 8.7 hours to comply with the collection of information requirements under subparts B and C of the proposed regulation and, based on its experience, that about 355 persons will be required to comply each year. Accordingly, the estimated burden of the collection of information under subparts B and C is 3075 hours. The respective numbers for subpart D (Form 200) are 3.35 hours to comply and 50 responses for a total estimated burden of 167.5 hours.

Comments on the paperwork provisions of the proposed rule and on the forms and instructions should be mailed to the Office of Information and

Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on respondents through the use of automated collection techniques (or other forms of information technology) or in other ways.

In particular, the PBGC invites suggestions regarding procedures for submitting some or all of the required information electronically.

#### Compliance With Rulemaking Guidelines

The PBGC is submitting this action as a "significant regulatory action" under Executive Order 12866 because the rule is the product of the PBGC's first use of the negotiated rulemaking process. The rule reflects the consensus of a negotiated rulemaking committee consisting of representatives of employers, participants, pension practitioners, and the PBGC. The action is not economically significant.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. For most reportable events, waivers based on plan size or funding level will exempt reporting for small plans. Even where reporting is required, there is no significant economic impact because the filing burden averages only 8.7 hours. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

#### List of Subjects

##### 29 CFR Part 4001

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

##### 29 CFR Part 4043

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

##### 29 CFR Part 4065

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4001, 4043, and 4065 of 29 CFR chapter LX as follows.

#### PART 4001—[AMENDED]

1. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302 (b)(3).

1a. Section 4001.2 is amended by adding the following definitions after the definition of distribution date:

\* \* \* \* \*

EIN means the nine digit employer identification number assigned by the Internal Revenue Service to the contributing sponsor of the plan.

EIN/PN means, as last filed with the PBGC, the nine-digit employer identification number assigned by the Internal Revenue Service to the contributing sponsor of the plan and the three-digit plan number assigned by the contributing sponsor to the plan.

\* \* \* \* \*

2. Section 4001.2 is further amended by adding the following to the end of the definition of controlled group:

\* \* \* \* \*

Controlled group \* \* \* any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

\* \* \* \* \*

3. Part 4043 is revised to read as follows:

#### PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

##### Subpart A—General Provisions

Sec.

- 4043.1 Purpose and scope.
- 4043.2 Definitions.
- 4043.3 Requirement of notice.
- 4043.4 Waivers and extensions.
- 4043.5 Where to file.
- 4043.6 Date of filing.
- 4043.7 Computation of time.
- 4043.8 Confidentiality.

##### Subpart B—Post-Event Notice of Reportable Events

- 4043.20 Post-event filing obligation.
- 4043.21 Tax disqualification and Title I noncompliance.
- 4043.22 Amendment decreasing benefits payable.
- 4043.23 Active participant reduction.
- 4043.24 Termination or partial termination.
- 4043.25 Failure to make required minimum funding payments.
- 4043.26 Inability to pay benefits when due.

- 4043.27 Distribution to a substantial owner.
- 4043.28 Plan merger, consolidation, or transfer.
- 4043.29 Change in contributing sponsor or controlled group.
- 4043.30 Liquidation.
- 4043.31 Extraordinary dividend or stock redemption.
- 4043.32 Transfer of benefit liabilities.
- 4043.33 Application for minimum funding waiver.
- 4043.34 Loan default.
- 4043.35 Bankruptcy or similar settlement.

#### Subpart C—Advance Notice of Reportable Events

- 4043.61 Advance reporting filing obligation.
- 4043.62 Change in contributing sponsor or controlled group.
- 4043.63 Liquidation.
- 4043.64 Extraordinary dividend or stock redemption.
- 4043.65 Transfer of benefit liabilities.
- 4043.66 Application for minimum funding waiver.
- 4043.67 Loan default.
- 4043.68 Bankruptcy or similar settlement.

#### Subpart D—Notice of Failure to Make Required Contributions

- 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.
- Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

#### Subpart A—General Provisions

##### § 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of failure to make certain required contributions.

##### § 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner. For purposes of this part:

*De minimis 10-percent segment* means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

- (1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first \$200 million in net tangible assets at the end of the fiscal year(s); or

(iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) \$5 million.

*De minimis 5-percent segment* has the same meaning as a de minimis 10-percent segment, except that "5 percent" is substituted for "10 percent" each time it appears.

*Event year* means the plan year in which the reportable event occurs.

*Fair market value of the plan's assets* means the fair market value of the plan's assets as of the testing date for the applicable plan year including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

*Foreign entity* means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

*Foreign-linked entity* means a person that—

(1) Is neither a foreign entity nor a contributing sponsor of a plan; and

(2) Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

*Foreign parent* means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor.

*Form 5500 due date* means the deadline (including extensions) for filing the annual report under section 103 of ERISA.

*Notice date* means the deadline (including extensions) for filing notice of the reportable event with the PBGC.

*Participant* means a participant as defined in § 4006.2.

*Public company* means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

*Testing date* means, with respect to a plan year—

(1) The last day of the prior plan year, except as provided in paragraphs (2) or (3) of this definition;

(2) In the case of a new or newly-covered plan (as defined in § 4006.2 of this chapter), the first day of the plan year or, if later, the date on which the plan becomes effective for benefit accruals for future service; or

(3) In the case of a plan described in § 4006.5(e)(2) of this chapter (relating to certain mergers or spinoffs), the first day of the plan year.

*Ultimate parent* means the parent at the highest level in the chain of corporations and/or other organizations constituting the parent-subsidiary controlled group.

*Unfunded vested benefits* means unfunded vested benefits determined in accordance with § 4006.4 of this chapter, without regard to the exemptions and special rules in § 4006.5 (a)–(c) of this chapter. For purposes of subpart B only, unfunded vested benefits may be determined by subtracting the fair market value of the plan's assets from the plan's vested benefits amount.

*Variable rate premium* means the portion of the premium determined under section 4006(a)(3)(E) of ERISA and § 4006.3(b) of this chapter.

*Vested benefits amount* means the vested benefits amount determined under § 4006.4(b)(1) of this chapter.

##### § 4043.3 Requirement of notice.

(a) *Obligation to file.* Each person that is required to file a notice under this part, or a duly authorized representative, shall submit the information required by this part by the time specified in § 4043.20 (for post-event notice), § 4043.61 (for advance notice), or § 4043.81 (for Form 200 filings). Any information previously filed with the PBGC may be

incorporated by reference. If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice shall provide, by the notice date, the following general information, along with any other information required for each reportable event under subpart B or C of this part:

- (1) The name of the plan;
- (2) The name, address, and telephone number of the contributing sponsor(s) and the name of an individual that should be contacted;
- (3) The name, address, and telephone number of the plan administrator and the name of an individual that should be contacted;
- (4) The EIN of the contributing sponsor and the EIN/PN of the plan;
- (5) A brief statement of the pertinent facts relating to the reportable event;
- (6) A copy of the plan document in effect, i.e., the last restatement of the plan and all amendments thereto;
- (7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan; and
- (8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion.

(c) *Optional reportable event forms.* The PBGC shall issue optional reportable events forms, which may provide for reduced initial information submissions.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information. Any such information shall be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Optional consolidated filing.* If more than one person is required to notify the PBGC under this part, a filing by one of those persons will be deemed to be a filing by the other person(s). If notices are required for two or more events, the notices may be combined in one filing.

(f) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, the PBGC may assess against each person required to

provide the notice a separate penalty under section 4071 of ERISA of up to \$1,000 a day for each day that the failure continues. The PBGC may pursue any other equitable or legal remedies available to it under the law.

#### **§ 4043.4 Waivers and extensions.**

(a) *Specific events.* For specific reportable events, waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, any event reportable under more than one section will be exempt from reporting only if it satisfies the requirements for a waiver under each section.

(b) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(c) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

- (1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination; or
  - (2) A trustee is appointed for the plan under section 4042(c) of ERISA.
- (d) *Other waivers and extensions.* The PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC and must state the facts and circumstances on which the request is based.

#### **§ 4043.5 Where to file.**

Requests and information shall be filed as follows—

- (a) Post-event notice under subpart B of this part: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; and
- (b) Advance notice under subpart C of this part and Form 200 filings under subpart D of this part: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

#### **§ 4043.6 Date of filing.**

(a) *Post-event notice.* Information filed under subpart B of this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

- (i) The postmark was made by the United States Postal Service; and
- (ii) The document was mailed postage prepaid, properly addressed to the PBGC; or

(2) On the date it is received by the PBGC, if the conditions stated in paragraph (a)(1) of this section are not met.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is considered filed on the date it is received by PBGC. A reportable event notice under subpart C of this part will be deemed filed on the date a facsimile transmission is sent to the PBGC, provided—

(1) The facsimile transmission contains the information required by § 4043.3(b) (1)–(6); and

(2) The remaining initial information is received by the PBGC on the next regular business day.

(c) *Receipt date.* Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

#### **§ 4043.7 Computation of time.**

In computing any period of time, the day of the event from which the period of time begins to run shall not be included. The last day so computed shall be included, unless it is a weekend or Federal holiday, in which case the period runs until the end of the next regular business day.

#### **§ 4043.8 Confidentiality.**

In accordance with section 4043(f) of ERISA and § 4901.21(a)(3) of this chapter, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

### **Subpart B—Post-Event Notice of Reportable Events**

#### **§ 4043.20 Post-event filing obligation.**

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred is required to notify the PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies.

**§ 4043.21 Tax disqualification and Title I noncompliance.**

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waivers.* Notice is waived for this event.

**§ 4043.22 Amendment decreasing benefits payable.**

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waivers.* Notice is waived for this event.

**§ 4043.23 Active participant reduction.**

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is reduced to less than 80 percent of the number of active participants at the beginning of the plan year, or to less than 75 percent of the number of active participants at the beginning of the previous plan year.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A statement explaining the cause of the reduction (e.g., facility shutdown or sale); and

(2) The number of active participants at the date the reportable event occurs, at the beginning of the plan year, and at the beginning of the prior plan year.

(c) *Waivers.*

(1) *Small plan.* Notice is waived if the plan has fewer than 100 participants at the beginning of either the current or the previous plan year.

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(3) *No facility closing event/80-percent funded.* Notice is waived if—

(i) The active participant reduction would not be reportable if only those active participant reductions resulting from cessation of operations at one or

more facilities were taken into account; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) or (c)(3) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Form 5500 extension.* 30 days after the plan's Form 5500 due date that next follows the date the reportable event occurs, provided the event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(3) *Form 1-ES extension.* The due date for the Form 1-ES for the plan year following the event year if—

(i) The plan is required to file a Form 1-ES for the plan year following the event year;

(ii) The event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(iii) The participant reduction represents no more than 20 percent of the total active participants (at the beginning of the plan year(s) in which the reduction occurs) in all plans maintained by any member of the plan's controlled group.

(e) *Determination of the number of active participants.*—(1) *Determination date.* The number of active participants at the beginning of a plan year may be determined at the end of the previous plan year.

(2) *Active participant.* "Active participant" means a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

**§ 4043.24 Termination or partial termination.**

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waivers.* Notice is waived for this event.

**§ 4043.25 Failure to make required minimum funding payment.**

(a) *Reportable event.* A reportable event occurs when a required installment or a payment required under section 302 of ERISA or section 412 of the Code (including a payment required as a condition of a funding waiver) is not made by the due date for the payment. In the case of a payment needed to avoid a deficiency in the plan's funding standard account, the due date is the latest date such payment may be made under section 302(c)(10)(A) of ERISA or section 412(c)(10)(A) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The due date and amount of the required minimum funding payment that was not made and of the next payment due;

(2) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(3) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waiver.* Notice is waived if the required minimum funding payment is made by the 30th day after its due date.

(d) *Form 200 filed.* If, with respect to the same failure, a Form 200 has been completed and submitted in accordance with § 4043.81, the Form 200 filing shall be deemed to satisfy the requirements of this section.

**§ 4043.26 Inability to pay benefits when due.**

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan shall not be treated as being currently unable to pay benefits if its failure to pay is caused solely by the need to verify the person's eligibility for benefits; the inability to locate the person; or any other administrative delay if the delay is for less than the shorter of two months or two full benefit payment periods.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's "liquid assets" are less than two times the amount of

the "disbursements from the plan" for such quarter. Liquid assets and disbursements from the plan have the same meaning as under section 302(e)(5)(E) of ERISA and section 412(m)(5)(E) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The date of any current inability and the amount of benefit payments not made;

(2) The next date on which the plan is expected to be unable to pay benefits, the amount of the projected shortfall, and the number of plan participants and beneficiaries expected to be affected by the inability to pay benefits;

(3) For a projected inability described in paragraph (a)(2), the amount of the plan's liquid assets at the end of the quarter, and the amount of its disbursements for the quarter; and

(4) The name, address, and phone number of the trustee of the plan (and of any custodian).

(c) *Waivers.* Notice is waived unless the reportable event occurs during a plan year for which the plan is described in section 302(d)(6)(A) of ERISA or section 412(l)(6)(A) of the Code.

**§ 4043.27 Distribution to a substantial owner.**

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds \$10,000;

(3) The distribution is not made by reason of the substantial owner's death; and

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5) that are not funded.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name, address and telephone number of the substantial owner receiving the distribution(s); and

(2) The amount, form, and date of each distribution.

(c) *Waivers.*—(1) *Distribution up to section 415 limit.* Notice is waived if the total of all distributions made to the substantial owner within the one-year period ending with the date of the distribution does not exceed the limitation (as of the date the reportable event occurs) under section 415(b)(1)(A) of the Code (as adjusted in accordance with section 415(d)) when expressed as

an annual benefit in the form of a straight life annuity to a participant beginning at Social Security retirement age (\$120,000 for calendar year 1996).

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iii) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(3) *Distribution up to one percent of assets.* Notice is waived if the sum of the values of all distributions that are made to the substantial owner within the one-year period ending with the date of the distribution is one percent or less of the end-of-year current value of the plan's assets (as required to be reported on the plan's Form 5500) for either of the two plan years immediately preceding the event year.

(d) *Form 1 extension.* The notice date is extended until 30 days after the plan's variable rate premium filing due date for the event year, provided that a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) of this section would apply if "the plan year preceding the event year" were substituted for "the event year."

(e) *Determination rules.*—(1) *Valuation of distribution.* The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution.* The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date.* The determination of whether a participant is (or has been in the preceding 60

months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

**§ 4043.28 Plan merger, consolidation or transfer.**

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waivers.* Notice is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

**§ 4043.29 Change in contributing sponsor or controlled group.**

(a) *Reportable event.* A reportable event occurs for a plan when, as a result of a transaction, one or more persons will cease to be members of the plan's controlled group. This does not include a transaction that will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's old and new controlled groups and the member's ownership relationship to other members of those groups;

(2) For each other plan maintained by any member of the plan's old or new controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate; and

(3) A copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the plan's contributing sponsor (both old and new, in the case of a change in the contributing sponsor) and any persons that will cease to be in the plan's controlled group.

(c) *Waivers.*—(1) *De minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a de minimis 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—



(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entities.* With respect to a transaction in which only foreign parents or foreign-linked entities will cease to be members of the plan's controlled group, 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor before the effective date of the transaction is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

(e) *Transaction.* For purposes of this section, the term "transaction" includes, but is not limited to, a legally binding agreement, whether or not written, to transfer, a transfer, and a change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.

(f) *Examples.* The following examples assume that no waivers apply.

(1) *Controlled group breakup.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company C. As a result of a transaction, the controlled group will

break into two separate controlled groups—one segment consisting of Company A and the other segment consisting of Companies B and C. Both Company A (Plan A's contributing sponsor) and the plan administrator of plan A are required to report that Companies B and C will leave plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. In connection with a sale of Company Q's assets and the transfer of employees, Plan Q will be transferred to Company R, which is not a member of Company Q's controlled group. There is no change in the structure of Company Q's controlled group. The plan administrator and contributing sponsor of Plan Q are required to report that Company Q (and any other member of Company Q's controlled group) will cease to be a member of Plan Q's controlled group.

(3) *Merger/consolidation within a controlled group.* Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives). Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

#### § 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's controlled group before and after the liquidation and its ownership relationship to other members of that controlled group; and

(2) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.*— (1) *De minimis 10-percent segment.* Notice is waived if—

(i) The person or persons that liquidate represent a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs; and

(ii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(2) *Foreign entity.* Notice is waived if each person that liquidates is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if any plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation and—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship, if the person liquidating is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10 filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.



**§ 4043.31 Extraordinary dividend or stock redemption.**

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend or redeems its own stock, if the resulting distribution is reportable under this paragraph.

(1) *Cash distributions.* A cash distribution is reportable if—

(i) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the preceding fiscal year; and

(ii) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the four preceding fiscal years.

(2) *Non-cash distributions.* A non-cash distribution is reportable if its net value (as defined in paragraph (e)(4) of this section), when combined with the net value of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10 percent of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(3) *Combined distributions.* If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the cash distribution percentage and the non-cash distribution percentages for the fiscal year exceeds 100 percent.

(b) *Information required.* In addition to the information in § 4043.5(b), the notice shall include—

(1) Identification of the person making the distribution (by name and EIN); and

(2) The date and amount of any cash distribution during the fiscal year;

(3) A description of any non-cash distribution during the fiscal year, the fair market value of each asset distributed, and the date or dates of distribution; and

(4) A statement as to whether the recipient was a member of the plan's controlled group.

(c) *Waivers—(1) Extraordinary dividends and stock redemptions.* The reportable event described in section 4043(c)(11) of ERISA related to extraordinary dividends and stock redemptions is waived except to the extent reporting is required under this section.

(2) *De minimis 5-percent segment.*

Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(3) *Foreign entity.* Notice is waived if the person making the distribution is a foreign entity other than a foreign parent.

(4) *Foreign parent.* Notice is waived if the person making the distribution is a foreign parent, and the distribution is made solely to other members of the plan's controlled group.

(5) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(5)(i) through (c)(5)(iv) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the distribution and the controlled group relationship, if the person making the distribution is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the distribution; or

(ii) The date (if any) when a press release with respect to the distribution is issued.

(e) *Definitions.*

(1) *Adjusted net income* means the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

(2) *Cash distribution percentage* means, for a fiscal year, the lesser of—

(i) The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the preceding fiscal year; or

(ii) The percentage that all cash distributions to one or more shareholders made during that fiscal year and the three preceding fiscal years bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the four preceding fiscal years.

(3) *Dividend* means a distribution to one or more shareholders. A payment by a person to a member of its controlled group is treated as a distribution to its shareholder(s).

(4) *Net value of non-cash distribution* means the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution shall be deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(5) *Non-cash distribution percentage* means the percentage that the net value of the non-cash distribution bears to one-tenth of the value of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(6) *Total net assets* means, with respect to the person declaring a non-cash distribution—

(i) If all classes of the person's securities are publicly traded, the total market value (immediately before the distribution is made) of the publicly-traded securities of the person making the distribution;

(ii) If no classes of the person's securities are publicly traded, the excess (immediately before the distribution is made) of the book value of the person's assets over the book value of the

person's liabilities, adjusted to reflect the net value of the non-cash distribution; or

(iii) If some but not all classes of the person's securities are publicly traded, the greater of the amounts in paragraphs (e)(6)(i) or (ii) of this section.

#### **§ 4043.32 Transfer of benefit liabilities.**

(a) *Reportable event*—(1) *In general.* A reportable event occurs for a plan when—

(i) The plan or any other plan maintained by a person in the plan's controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(ii) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities shall be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(l) of the Code.

(2) *Date of transfer.* The date of transfer shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(l) of the Code, a date determined in accordance with 26 CFR 1.414(l)-1(b)(11) will be considered the date of transfer.

(b) *Initial information required.* In addition to the information required in § 4043.3(b), the notice shall include—

(1) Identification of the transferee(s) and each contributing sponsor of each transferee plan by name and EIN/PN or EIN, as appropriate;

(2) An explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, the value of plan assets) for each transfer; and

(3) An estimate of the amounts of assets and liabilities being transferred, and the number of participants whose benefits are transferred.

(c) *Waivers.* (1) *Complete plan transfer.* Notice is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets.* Notice is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(l) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor.* Notice is waived if the transfer complies with section 414(l) of the Code using the actuarial assumptions prescribed for valuing benefits in trustee plans under § 4044.51-57 of this chapter.

(4) *Fully funded plans.* Notice is waived if the transfer complies with section 414(l) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in trustee plans under § 4044.51-57) of this chapter.

(d) *Who must file.* Only the plan administrator and contributing sponsor of the plan that made the transfer described in paragraph (a)(1) of this section are required to file a notice of a reportable event under this section. Notice by any other contributing sponsor or plan administrator is waived.

#### **§ 4043.33 Application for minimum funding waiver.**

(a) *Reportable event.* A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 303 of ERISA or section 412(d) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include a copy of the waiver application, including all attachments.

#### **§ 4043.34 Loan default.**

(a) *Reportable event.* A reportable event occurs for a plan whenever there is a default by a member of the plan's controlled group with respect to a loan with an outstanding balance of \$10 million or more, if—

(1) The default results from the debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date);

(2) The lender accelerates the loan; or

(3) The debtor receives a written notice of default from the lender (and does not establish the notice was issued in error) on account of:

(i) A drop in the debtor's cash reserves below an agreed-upon level;

(ii) An unusual or catastrophic event experienced by the debtor; or

(iii) A persisting failure by the debtor to attain agreed-upon performance levels.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of the relevant loan documents (e.g., promissory note, security agreement);

(2) The due date and amount of any missed payment;

(3) A copy of any notice of default from the lender; and

(4) A copy of any notice of acceleration from the lender.

(c) *Waivers.*—(1) *Default cured.*

Notice is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

(2) *Foreign entity.* Notice is waived if the debtor is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Notice date and extensions.*

(1) *In general.* Except as provided in paragraph (d)(2) or (d)(3) of this section, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

(2) *Cure period extensions.* The notice date is extended to one day after—

(i) The applicable cure period provided in the loan agreement (in the case of a reportable event described in paragraph (a)(1) of this section);

(ii) The date the loan is accelerated (in the case of a reportable event described in paragraph (a)(2) of this section); or

(iii) The date the debtor receives written notice of the default (in the case of a reportable event described in paragraph (a)(3) of this section).

(3) *Form 1 extension.* The notice date is extended to 30 days after the plan's variable rate premium filing due date for the event year, if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iv) of this section would apply if "the plan year preceding the event year" were substituted for "the event year."

(4) *Foreign parent and foreign-linked entities.* With respect to a loan default

involving only a foreign parent or a foreign-linked entity, the notice date is extended to 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the default and of the controlled group relationship.

(5) *Example.* Company A has a debt with an outstanding balance of \$20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within 30 days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

#### **§ 4043.35 Bankruptcy or similar settlement.**

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences a bankruptcy case (under the Bankruptcy Code), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of all papers filed in the relevant proceeding, including, but not limited to, petitions and supporting schedules;

(2) The last date for filing claims;

(3) The name, address, and phone number of any trustee or receiver (or similar person);

(4) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(5) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.* Notice is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(d) *Extensions.* Unless the controlled group member described in paragraph

(a) of this section is the contributing sponsor of the plan, the notice date is extended until 30 days after the person required to notify the PBGC has actual knowledge of the reportable event.

#### **Subpart C—Advance Notice of Reportable Events**

##### **§ 4043.61 Advance reporting filing obligation.**

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan for which a reportable event under this subpart is going to occur is required to notify the PBGC no later than 30 days before the effective date of the reportable event if the contributing sponsor is subject to advance reporting.

(b) *Persons subject to advance reporting.* A contributing sponsor is subject to the advance reporting requirement under paragraph (a) of this section if—

(1) Neither the contributing sponsor nor the member of the plan's controlled group to which the event relates is a public company; and

(2) The contributing sponsor is a member of a controlled group maintaining one or more plans that, in the aggregate (disregarding plans with no unfunded vested benefits) have—

(i) Vested benefits amounts that exceed the actuarial values of plan assets by more than \$50 million; and

(ii) A funded vested benefit percentage of less than 90 percent.

(c) *Funding determinations.* For purposes of paragraph (b)(2) of this section.

(1) *Actuarial value of assets.* The actuarial value of plan assets is determined in accordance with § 4006.4(b)(2) of this chapter;

(2) *Funded vested benefit percentage.* The aggregate funded vested percentage of one or more plans is the percentage that the total actuarial values of plan assets bears to the plans' total vested benefits amounts; and

(3) *Testing date.* Each plan's assets and vested benefits amount are determined as of that plan's testing date for the plan year that includes the effective date of the reportable event.

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), the PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

##### **§ 4043.62 Change in contributing sponsor or controlled group.**

(a) *Reportable event and information required.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as

described in § 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event.

(b) *Waivers.*—(1) *Small plan.* Notice is waived with respect to a change of contributing sponsor if the transferred plan has 500 or fewer participants.

(2) *De minimis 5-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

##### **§ 4043.63 Liquidation.**

(a) *Reportable event and information required.* Advance notice is required for a liquidation of a member of a plan's controlled group, as described in § 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event.

(b) *Waiver.* Notice is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and any plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

##### **§ 4043.64 Extraordinary dividend or stock redemption.**

(a) *Reportable event and information required.* Advance notice is required for a distribution by a member of a plan's controlled group that would be described in § 4043.31(a) if both assets and liabilities were valued at fair market value. The notice shall include the information described in § 4043.31(b).

(b) *Waiver.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

##### **§ 4043.65 Transfer of benefit liabilities.**

(a) *Reportable event and information required.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b).

(b) *Waivers.* Notice is waived—

(1) In the circumstances described in § 4043.32 (c)(1), (c)(2), and (c)(4); and

(2) If the benefit liabilities of 500 or fewer participants are transferred, in the circumstances described in § 4043.32(c)(3).

**§ 4043.66 Application for minimum funding waiver.**

(a) *Reportable event and information required.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33(a), and the notice shall include the information described in § 4043.33(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

**§ 4043.67 Loan default.**

(a) *Reportable event and information required.* Advance notice is required for a loan default, as described in § 4043.34(a) (or that would be so described if "10 days" were substituted for "30 days" in § 4043.34(a)(1)). The notice shall include the information described in § 4043.34(b).

(b) *Waivers.* Notice is waived if the reportable default is cured, or the lender waives the default, within 10 days or, if later, by the end of any cure period.

(c) *Extensions.* The notice date is extended to the later of—

(1) *10 days after default.* 10 days after the default occurs (without regard to the time of any other conditions required for the default to be reportable); and

(2) *One day after subsequent event.* One day after—

(i) The applicable cure period provided in the loan agreement (in the case of a default described in § 4043.34(a)(1));

(ii) The date the loan is accelerated (in the case of a default described in § 4043.34(a)(2)); and

(iii) The date the debtor receives written notice of the default (in the case of a default described in § 4043.34(a)(3)).

**§ 4043.68 Bankruptcy or similar settlement.**

(a) *Reportable event and information required.* Advance notice is required for a bankruptcy or similar settlement, as described in § 4043.35(a), and the notice shall include the information described in § 4043.35(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

**Subpart D—Notice of Failure to Make Required Contributions****§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.**

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a

parent-subsidiary controlled group, the ultimate parent must complete and submit in accordance with this section a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a required installment or any other payment required under section 302 of ERISA and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, the PBGC will consider the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of ERISA and section 412(n) of the Code, the PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with § 4043.3(d).

**PART 4065—ANNUAL REPORT**

4. The authority citation for part 4065 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1365.

5. Section 4065.3 is amended by redesignating the existing text as paragraph (b); and adding a new paragraph (a) to read as follows:

**§ 4065.3 Filing requirement.**

(a) The requirement to report the occurrence of a reportable event under section 4043 of ERISA in the Annual Report is waived.

\* \* \* \* \*

Issued in Washington, DC, this 17th day of July, 1996.

Martin Slate,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 96-18608 Filed 7-23-96; 8:45 am]

BILLING CODE 7708-01-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[SPATS No. TX-31-FOR]

**Texas Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to rough backfilling and grading performance standards for cyclic and continuous excavation area strip mining operations. The amendments is intended to revise the Texas program to take into consideration the two types of area strip mining excavation operations conducted in the State of Texas and to clarify the time and distance standards for cyclic excavation area strip mining.

**DATES:** Written comments must be received by 4:00 p.m. c.d.t., August 23, 1996. If requested, a public hearing on the proposed amendment will be held on August 19, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. August 8, 1996.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135-6547, Telephone: (918) 581-6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas,