economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on small entities. The agency has considered the effect that this rule will have on small entities, including small businesses, and certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. This rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, so no budgetary impact statement is required.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before March 1, 1999, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

2. Section 312.42 is amended by revising paragraph (e) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(e) *Resumption of clinical investigations.* An investigation may only resume after FDA (usually the Division Director, or the Director's designee, with responsibility for review of the IND) has notified the sponsor that the investigation may proceed. Resumption of the affected investigation(s) will be authorized when the sponsor corrects the deficiency(ies) previously cited or otherwise satisfies the agency that the investigation(s) can proceed. FDA may notify a sponsor of its determination regarding the clinical hold by telephone or other means of rapid communication. If a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA shall respond in writing to the sponsor within 30-calendar days of receipt of the request and the complete response. FDA's response will either remove or maintain the clinical hold, and will state the reasons for such determination. Notwithstanding the 30-calendar day response time, a sponsor may not proceed with a clinical trial on which a clinical hold has been imposed until the sponsor has been notified by FDA that the hold has been lifted.

* * * * *

Dated: December 4, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–33029 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8795]

RIN 1545–AT78

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of plan amendments, which provide for a significant reduction in the rate of future benefit accural, to participants in the plan and certain other parties.

DATES: Effective Date: December 14, 1998.

Applicability Dates: For dates of applicability of these regulations, see Effective Dates under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Diane S. Bloom at (202)622–6214 or Christine L. Keller at (202)622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3705(d)) under the control number 1545–1477. The collection of information in these final regulations is in § 1.411(d)–6. Responses to this collection of information are required in order to obtain a benefit. Specifically, this information is required for a taxpayer who wants to amend a qualified plan to significantly reduce the rate of future benefit accrual. This information will be used to notify participants, alternate payees and employee organizations of the amendment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated average burden per recordkeeper varies from 1 hour to 40

hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 12, 1995, temporary regulations (TD 8631), under section 411 of the Internal Revenue Code, 26 U.S.C. 411, were filed, providing guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). The temporary regulations were published in the **Federal Register** on December 15, 1995 (60 FR 64320). A notice of proposed rulemaking (EE–34–95), cross-referencing the temporary regulations, was published in the **Federal Register** (60 FR 64401) on the same day.

After consideration of the comments received regarding the proposed regulations, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision.

Section 204(h) was added to ERISA by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Pub. L. 99–272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Pub. L. 99–514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

In addition to the proposed and temporary regulations, prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 94–13 (1994–1 C.B. 566), Notice 90–73 (1990–2 C.B. 353), Notice 89–92 (1989–2 C.B. 410), Rev. Proc. 89–65 (1989–2 C.B. 786), Notice 88–131 (1988–2 C.B. 546), and Notice 87–21 (1987–1 C.B. 458).

Explanation of Provisions

Section 204(h) applies if a defined benefit plan or a money purchase pension or other individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, to alternate payees, and to employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) may also be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days before the effective date of an amendment significantly reducing the rate of future benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Summary of Comments

Commentators generally supported the basic rules in the proposed and temporary regulations, and the final regulations are substantially similar to the proposed and temporary regulations. However, a number of clarifications have been made in response to comments.

For example, changes have been made in the rules for cases in which there has been a failure to notify all affected participants in accordance with section 204(h). The proposed and temporary regulations provided that if a plan administrator fails to notify more than a de minimis percentage of affected participants, the plan administrator is considered to have complied with section 204(h) only with respect to those participants who were provided with section 204(h) notice. In response to comments, the final regulations have added a requirement that the plan administrator have acted in good faith in order for this relief to apply. Thus, where there is an intentional failure to give section 204(h) notice, the amendment will not be effective as to any participant.

In addition, the final regulations provide that the basic rule in Q&A–13 of the final regulations (that the amendment will not be effective with respect to participants or alternate payees who did not receive section 204(h) notice) applies unless the number of participants who were not provided with section 204(h) notice is de minimis and certain other conditions (described in Q&A–14 of the final regulations) are satisfied. Thus, the regulations clarify that, except for the limited circumstances set forth in Q&A–14 of the final regulations relating to certain de minimis failures to notify, the amendment will not be effective with respect to participants or alternate payees who did not receive notice in accordance with section 204(h).

At the suggestion of commentators, the final regulations also address the application of section 204(h) to a sale of a business, as well as its application to plan mergers and transfers of plan assets and liabilities. The final regulations add examples that apply the general principles established under the regulations to typical sales and merger transactions. In response to one commentator, an example has been added to illustrate that a plan merger can require notice under section 204(h).

In response to requests by commentators for additional guidance on the mechanics of providing section 204(h) notice, Q&A–11 has been added providing rules that can be relied on to calculate the 15-day notice period. These rules provide that when section 204(h) notice is delivered by first class mail, the notice is considered given as of the date of the United States postmark stamped on the cover in which the document is mailed.

Commentators also suggested that the rules under the temporary regulations concerning plan terminations needed to be expanded. The final regulations contain an example illustrating the application of section 204(h) to certain specific situations that arise when a defined benefit plan cannot be terminated on a proposed termination date because there is a failure to satisfy

all of the requirements of title IV of ERISA for terminating the plan. The example provides, in part, that if all of the requirements of title IV are not satisfied accruals will still cease if an amendment has been adopted that ceases accruals as of a specified date and section 204(h) notice of that amendment, including a statement of its effective date, is given. Apart from this clarification, the rule under the temporary regulations concerning terminations under title IV remains unchanged.

The final regulations, like the proposed and temporary regulations, interpret section 204(h) as applying with respect to changes that affect the annual benefit commencing at normal retirement age. The statutory phrase ''rate of future benefit accrual'' implies, on its face, that section 204(h) is limited to changes in the accrued benefit. Nonetheless, one commentator suggested that the temporary regulations be changed to require section 204(h) notice when defined benefit plans are amended to significantly reduce or eliminate early retirement subsidies or optional forms of benefit. Most commentators, however, generally supported the basic standard of the regulations under which a reduction in the rate of future benefit accrual depends on whether the amendment affects the annual benefit commencing at normal retirement age. Some commentators also noted that the approach in the proposed and temporary regulations would ease plan administration. Accordingly, the final regulations retain the rule of the proposed and temporary regulations that, for purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

The final regulations clarify that the term ''annual benefit commencing at normal retirement age'' refers, in a defined benefit plan, to the benefit payable in the form in which the terms of the plan express the accrued benefit. In the case of a defined benefit plan that does not express the accrued benefit as an annual benefit, the final regulations provide that the term ''annual benefit commencing at normal retirement age'' refers to the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan under the principles of section 411(c)(3) (relating to actuarial adjustments to determine an employee's accrued benefit).

Some commentators also suggested that certain bright-line standards be established for some of the rules, including how to determine whether an amendment results in a significant reduction and what constitutes a de minimis percentage of participants for purposes of the rules relating to failure to provide notice to all participants and alternate payees. Because the wide variety of potential facts and circumstances make it difficult to adopt clear standards that are appropriate in all circumstances, the final regulations do not include such bright-line standards.

Effective Dates

The final regulations apply to amendments adopted on or after December 12, 1998. The final regulations provide that the rules set forth in the temporary regulations apply to determine whether section 204(h) and the final regulations are satisfied with respect to an amendment that is adopted before the effective date of the final regulations (and on or after the effective date of the temporary regulations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the notice of proposed rulemaking preceding the regulations was issued prior to March 24, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christine L. Keller. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by removing the entry for § 1.411(d)–6T and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–6 is issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

§ 1.411(d)–6T [Removed]

Par. 2. Section 1.411(d)–6T is removed.

Par. 3. Section 1.411(d)–6 is added to read as follows:

§ 1.411(d)–6 Section 204(h) notice.

Q–1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (29 U.S.C 1054(h))?

A–1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA (''section 204(h)'') generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q–2: To which plans does section 204(h) apply?

A–2: Section 204(h) applies to defined benefit plans that are subject to part 2 of subtitle B of title I of ERISA and to individual account plans that are subject to both such part 2 and the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q–3: What is ''section 204(h) notice''?

A–3: ''Section 204(h) notice'' is notice that complies with section 204(h) and the rules in this section.

Q–4: For which amendments is section 204(h) notice required?

A–4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A–2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A–4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h)?

A–5: (a) *In general*—(1) *Defined benefit plans.* For purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with the principles of section 411(c)(3) of the Code).

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A–5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A–5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A–5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not change the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the actuarial factors used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not change the rate of future benefit accrual for purposes of section 204(h).

Q–6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A–6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A–5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A–6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which is 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q–7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h)?

A–7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted. For a defined benefit plan this is done by comparing the amount of the annual benefit commencing at normal retirement age as determined under Q&A–5(a)(1) under the terms of the plan as amended, with the amount of the annual benefit commencing at normal retirement age as determined under Q&A–5(a)(1) under the terms of the plan prior to amendment. For an individual account plan, this is done in accordance with Q&A–5(a)(2) by comparing the amounts to be allocated in the future to participants' accounts under the terms of the plan as amended, with the amounts to be allocated in the future to participants' accounts under the terms of the plan prior to amendment.

Q–8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account in applying section 204(h) with respect to the amendment?

A–8: No. Employees who have not yet become participants in a plan at the

time an amendment to the plan is adopted are not taken into account in applying section 204(h) with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q–9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?

A–9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A–9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A–9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. The facts are the same as in Example 1 except that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. The facts are the same facts as in *Example 4*, except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q–10: Does a notice fail to comply with section 204(h) if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A–10: No, the notice does not fail to comply with section 204(h) merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q–11: How may section 204(h) notice be provided?

A–11: A plan administrator (including a person acting on behalf of the plan administrator such as the employer or plan trustee) may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed with or combined with other notice provided by the employer or plan administrator. For example, a notice of intent to terminate under title IV of ERISA or a notice to interested parties of the application for a determination letter may also serve as section 204(h) notice if it otherwise meets the requirements of this section.

Q–12: How may the 15-day notice requirement be satisfied?

A–12: (a) *Generally.* A section 204(h) notice is deemed to have been provided at least 15 days before the effective date of the amendment if it has been provided by the end of the 15th day before the effective date. When notice is delivered by first class mail, the notice is considered provided as of the date of the United States postmark stamped on the cover in which the document is mailed.

(b) *Example.* The following example illustrates the provisions of this Q&A–12:

Example. Plan A is amended to reduce significantly the rate of future benefit accruals effective December 1, 1999. The plan administrator causes section 204(h) notice to be mailed to all affected participants. The mailing is postmarked November 16, 1999. Accordingly, the section 204(h) notice is considered to be given not less than 15 days before the effective date of the plan amendment.

Q–13: If a plan administrator fails to provide section 204(h) notice to some participants or alternate payees, will the plan administrator be considered to have complied with section 204(h) with respect to participants and alternate payees who were provided with section 204(h) notice?

A–13: The plan administrator will be considered to have complied with section 204(h) with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with section 204(h) notice, and if the plan administrator has made a good faith effort to comply with the requirements of section 204(h). The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was provided with section 204(h) notice, and if the plan administrator made a good faith effort to comply with the requirements of section 204(h). If these conditions are satisfied the amendment will become effective in accordance with its terms with respect to the participants and alternate payees to whom section 204(h) notice was provided. Except to the extent provided

in Q&A–14, the amendment will not become effective with respect to those participants and alternate payees who were not provided with section 204(h) notice.

Q–14: Will a plan be considered to have complied with section 204(h) if the plan administrator provides section 204(h) notice to all but a de minimis percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A–14: The plan will be considered to have complied with section 204(h) and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and (d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q–15: How does section 204(h) apply to the sale of a business?

A–15: (a) *Generally.* Whether section 204(h) notice is required in connection with the sale of a business depends on whether a plan amendment is adopted that significantly reduces the rate of future benefit accrual.

(b) *Examples.* The following examples illustrate the rules of this Q&A–15:

Example 1. Corporation Q maintains Plan A, a defined benefit plan that covers all employees of Corporation Q, including employees in its Division M. Plan A provides that participating employees cease to accrue benefits when they cease to be employees of Corporation Q. On January 1, 2000, Corporation Q sells all of the assets of Division M to Corporation R. Corporation R maintains Plan B, which covers all of the employees of Corporation R. Under the sale agreement, employees of Division M become employees of Corporation R on the date of the sale (and cease to be employees of Corporation Q), Corporation Q continues to maintain Plan A following the sale, and the employees of Division M become participants in Plan B. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. The employees of Division M who become employees of Corporation R ceased to accrue benefits under Plan A because their employment with Corporation Q terminated.

Example 2. Subsidiary Y is a wholly owned subsidiary of Corporation S. Subsidiary Y maintains Plan C, a defined benefit plan that covers employees of Subsidiary Y. Corporation S sells all of the stock of Subsidiary Y to Corporation T. At the effective date of the sale of the stock of Subsidiary Y, in accordance with the sale agreement between Corporation S and Corporation T, Subsidiary Y amends Plan C so that all benefit accruals cease. In this Example, section 204(h) notice is required to be provided because Subsidiary Y adopted a plan amendment that significantly reduced the rate of future benefit accrual in Plan C.

Example 3. Corporation U maintains two plans: Plan D covers employees of Division N and Plan E covers the rest of the employees of Corporation U. Plan E provides a significantly lower rate of future benefit accrual than Plan D. Plan D is merged with Plan E, and all of the employees of Corporation U will accrue benefits under the merged plan in accordance with the benefit formula of former Plan E. In this Example, section 204(h) notice is required.

Example 4. Corporation V maintains several plans, including Plan F, which covers employees of Division P. Plan F provides that participating employees cease to accrue further benefits under the plan when they cease to be employees of Corporation V. Corporation V sells all of the assets of Division P to Corporation W, which maintains Plan G for its employees. Plan G provides a significantly lower rate of future benefit accrual than Plan F. Plan F is merged with Plan G as part of the sale, and employees of Division P who become employees of Corporation W will accrue benefits under the merged plan in accordance with the benefit formula of former Plan G. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. Under the terms of Plan F as in effect prior to the merger, employees of Division P cease to accrue any further benefits under Plan F after the date of the sale because their employment with Corporation V terminated.

Q–16: How are amendments to cease accruals and terminate a plan treated under section 204(h)?

A–16: (a) *General rule*—(1) *Rule.* An amendment providing for the cessation of benefit accruals on a specified future date and for the termination of a plan is subject to section 204(h).

(2) *Example.* The following example illustrates the rule of paragraph (a)(1) of this Q&A–16:

Example. (i) An employer adopts an amendment that provides for the cessation of benefit accruals under a defined benefit plan on December 31, 2001, and for the termination of the plan pursuant to title IV of ERISA as of a proposed termination date that is also December 31, 2001. As part of the notice of intent to terminate required under title IV in order to terminate the plan, the plan administrator gives section 204(h) notice of the amendment ceasing accruals, which states that benefit accruals will cease ''on December 31, 2001.'' However, because all the requirements of title IV for a plan termination are not satisfied, the plan cannot be terminated until a date that is later than December 31, 2001.

(ii) Nonetheless, because section 204(h) notice was given stating that the plan was amended to cease accruals on December 31, 2001, section 204(h) does not prevent the amendment to cease accruals from being effective on December 31, 2001. The result would be the same had the section 204(h) notice informed the participants that the plan was amended to provide for a proposed termination date of December 31, 2001, and to provide that ''benefit accruals will cease on the proposed termination date whether or not the plan is terminated on that date.'' However, the cessation of accruals would not be effective on December 31, 2001, had the section 204(h) notice merely stated that benefit accruals would cease ''on the termination date or on the proposed termination date.

(b) *Terminations in accordance with title IV of ERISA.* A plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would in no event require that any additional benefits accrue after the effective date of the termination.

(c) *Amendment effective before termination date of a plan subject to title IV of ERISA.* To the extent that an amendment providing for a significant reduction in the rate of future benefit accrual has an effective date that is earlier than the termination date (or date of termination, as applicable) established under section 4048 of ERISA, that amendment is subject to section 204(h). Accordingly, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to such an amendment.

Q–17: When does section 204(h) become effective?

A–17: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date*—(1) *General regulatory effective date.* This section is applicable for amendments adopted on or after December 12, 1998.

(2) *Special rule for amendments adopted under the temporary regulations.* Whether an amendment

that is adopted on or after December 15, 1995 and before December 12, 1998 complies with section 204(h) is determined under the rules of § 1.411(d)–6T in effect prior to December 14, 1998 (See 1.411(d)–6T in 26 CFR Part 1 revised as of April 1, 1998).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, the table in paragraph (c) is amended by removing the entry for 1.411(d)6–T and by adding an entry in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.411(d)–6	1545–1447
* * * * *	

Approved: December 4, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–32925 Filed 12–11–98; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AA79

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums moves the final filing due date for premium declarations to October 15th for calendar year plans (so that it is the same as the extended Form 5500 due date) and makes parallel changes for non-calendar year plans.

EFFECTIVE DATE: February 12, 1999. The amendment applies to premium payment years beginning after 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007), final premium filings are generally due on the 15th day of the eighth full calendar month following the month in which the premium payment year begins (*e.g.*, for calendar year plans, September 15th). (Special rules apply to plans that change plan years and to new and newly-covered plans.) On April 10, 1992, the PBGC published in the **Federal Register** (at 57 FR 12666) a proposed amendment to its regulations that would (among other things) have deferred the final filing due date to the end of the ninth full calendar month of the premium payment year (*e.g.*, for calendar year plans, September 30th).

Seven commenters addressed this issue. Two indicated simple approval. The other five urged a further deferral, to the middle of the following month (*e.g.*, for calendar year plans, October 15th). The latter date is the due date (as often extended) for the Form 5500 and Schedule B thereto, on which the Alternative Calculation Method in the PBGC's regulation on Premium Rates (29 CFR part 4006) is based. Reasons given for the further deferral included the avoidance of confusion and administrative burdens caused by the premium form's not being coordinated with the Form 5500 and Schedule B, and the consistency and simplicity that would result if the filing due dates were coordinated.

The PBGC has concluded that the further deferral suggested by the commenters is appropriate, and that the method of computing the premium filing deadline for plans whose plan years do not begin on the first of a month should match the method for computing the Form 5500 filing deadline for such plans.

Accordingly, this final rule moves the final filing due date to the 15th day of the tenth full calendar month of the premium payment year, subject to the existing special rules for plans that change plan years and for new and newly-covered plans. Thus, the due date will now be October 15th for calendar year plans. For non-calendar-year plans with plan years beginning on the first day of the month, the extension is one month. For example, the final premium filing date for a July 1 plan moves from March 15 to April 15. A plan whose plan year begins on a date other than the first of a month gets a two-month extension from the due date under the old rule in order to parallel the Form 5500 due date. Thus, for example, a plan whose plan year begins on January 2d will now have until November 15 to file (compared to September 15 under the old rule).

Compliance With Rulemaking Guidelines; Economic Impact Analysis

This action has been reviewed by the Office of Management and Budget under Executive Order 12866 as an economically significant regulatory action. The Office of Management and Budget has determined that this action is a ''major rule'' as defined in 5 U.S.C. 804(2) for purposes of Congressional review of agency rulemaking under subtitle E of title II of the Small Business Regulatory Enforcement Fairness Act of 1996.

PBGC premium payments are included as receipts in the Federal budget. Moving the final premium due date will shift an estimated $350 million (representing primarily calendar year plans' final premium payments) from the end of fiscal year 1999 to the beginning of fiscal year 2000. Under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, OMB treats a rule with a Federal budget impact of over $100 million in one year as a major rule. Thus, the movement of the final premium filing date—which results only in deferral, not loss, of the approximately $350 million in premium payments that would otherwise be