the Rule does not impose substantial economic burdens; and that the benefits outweigh the minimal costs the Rule imposes. Although commenters recommended that the Commission modify certain aspects of the Rule, none of the comments provided sufficient evidence demonstrating that such modifications were necessary and would, in fact, help consumers. Moreover, none of the comments proposing such modifications analyzed the associated costs.

The FTC plans to review and consider revising our consumer education materials to address the concerns raised in the comments submitted pursuant to this rule review to ensure that consumers more easily understand the Rule's protections. Furthermore, as noted in both NCLC's and NACA's comments, the Commission has a variety of enforcement tools available to help ensure compliance.[47] If, at a later date, the Commission concludes that the Rule, case law interpreting the Rule, and the FTC's other enforcement tools do not provide adequate guidance and protection for consumers in the marketplace, it can then consider, based on a further record, whether and how to amend the Rule. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

By direction of the Commission.

Julie A. Mack,

Acting Secretary.

LIST OF COMMENTING ORGANIZATIONS AND SHORT-NAMES/ACRONYMS

Short-name/acronyms	Commenter
AFSA	American Financial Services Association.
CU Direct	CU Direct Corporation.
CUNA	Credit Union National Association.
DC AG	Attorney General for the District of Columbia.
Heartland	Heartland Credit Union Association.
ICUL	Illinois Credit Union League.
Iowa AG	Iowa Attorney General's Office.
Joint Attorney Generals	Attorneys General of New York, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Virginia and Washington.
MBA	Mortgage Bankers Association.
MFY	MFY Legal Services, Inc., Lincoln Square Legal Services, Inc., and Fordham Law School's Feerick Center for Social Justice.
NACA	National Association of Consumer Advocates.
NADA	National Automobile Dealers Association.
NCLC	National Consumer Law Center, Americans for Financial Reform, The Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers for Auto Reliability and Safety, Consumers Union, NAACP, NACA, The Institute for College Access & Success, U.S. Public Interest Research Group, Alabama Appleseed, Arizona Community Action Association, Arkansans Against Abusive Payday Lending, Arkansas Community Organizations, Community Legal Services, Connecticut Association for Human Services, Connecticut Citizens Action Group, Housing and Economic Rights Advocates, Kentucky Equal Justice Center, LAF, The Legal Assistance Resource Center of Connecticut, North Carolina Justice Center, Public Justice Center, Public Law Center, Veterans Education Success, Virginia Citizens Consumer Council, and Woodstock Institute.
NIADA	National Independent Automobile Dealers Association.
Wells Fargo	Wells Fargo Bank.

[FR Doc. 2019–08886 Filed 5–1–19; 8:45 am]

BILLING CODE 6750–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4041A, 4245, and 4281

RIN 1212–AB38

Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its multiemployer reporting, disclosure, and valuation regulations to reduce the number of actuarial valuations required for smaller plans terminated by mass withdrawal, add a valuation filing requirement and a withdrawal liability reporting requirement for certain terminated plans and insolvent plans, remove certain insolvency notice and update requirements, and reflect the repeal of the multiemployer plan reorganization rules.

DATES: *Effective date:* This rule is effective July 1, 2019.

Applicability dates: The amendments to 29 CFR part 4041A that make changes to the definitions, the content of the notice of termination, and the determination of plan solvency; and the amendments to 29 CFR parts 4245 and 4281 that make changes to the notices of insolvency, notices of insolvency benefit level, and applications for financial assistance will be applicable as of July 1, 2019.

The amendments to 29 CFR parts 4041A and 4245 that require plan sponsors to file with PBGC withdrawal liability information will be applicable for plan years ending after July 1, 2019.

The amendments to 29 CFR parts 4041A and 4245 that change the annual actuarial valuation requirement will be applicable to actuarial valuations prepared for plan years ending after July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–326–4400, extension 3839. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3839.)

SUPPLEMENTARY INFORMATION:

[47] The Commission encourages all stakeholders and consumers to refer suspected violations of the Holder Rule to the Commission via *ftc.gov/complaints.*

Executive Summary—Purpose of the Regulatory Action

This final rule makes certain reporting and disclosure of multiemployer information to PBGC and interested parties more efficient and reflects the repeal of the multiemployer plan reorganization rules. The rule reduces costs by allowing smaller plans terminated by mass withdrawal to perform actuarial valuations less frequently and by removing certain notice requirements for insolvent plans. This reduces plan administrative costs and, in turn, may reduce financial assistance provided by PBGC.

PBGC's legal authority for this action is based on section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA; section 4041A(f)(2) of ERISA, which gives PBGC authority to prescribe reporting requirements for terminated plans; section 4245(e) of ERISA, which directs PBGC to prescribe requirements for notices regarding multiemployer plan insolvency; section 4261 of ERISA, which authorizes PBGC to provide financial assistance to insolvent plans; and section 4281(d)(3) of ERISA, which directs PBGC to prescribe requirements for notices to plan participants and beneficiaries in the event of a benefit suspension by an insolvent plan.

Executive Summary—Major Provisions of the Regulatory Action

Plan Sponsor Duties—Annual Valuation and Withdrawal Liability

The plan sponsor of a multiemployer plan terminated by mass withdrawal is responsible for specific duties, including an annual actuarial valuation of the plan's assets and benefits. This final rule reduces administrative burden by allowing a plan sponsor to perform an actuarial valuation only every 5 years if the present value of the plan's nonforfeitable benefits is $50 million or less. The final rule adds a new requirement for plan sponsors of certain terminated plans and insolvent plans to file actuarial valuations with PBGC. Where the present value of the plan's nonforfeitable benefits is $50 million or less, a plan receiving financial assistance from PBGC may file alternative valuation information.

The plan sponsor of a multiemployer plan also is responsible for determining, giving notice of, and collecting withdrawal liability. The final rule requires plan sponsors of certain terminated plans and insolvent plans to file with PBGC information about withdrawal liability payments and whether any employers have withdrawn but have not yet been assessed withdrawal liability.

Insolvency Notices and Updates

The plan sponsor of a multiemployer plan terminated by mass withdrawal that is insolvent or is expected to be insolvent for a plan year must provide certain notices to PBGC and participants and beneficiaries. Similarly, the plan sponsor of a multiemployer plan that is certified by the plan's actuary to be in critical status and that is expected to become insolvent under section 4245 of ERISA must provide certain notices to PBGC and interested parties. Notices include a notice of insolvency and a notice of insolvency benefit level. The final rule eliminates outdated information included in the notices and changes the frequency of the notices. A plan sponsor is required to provide notices of insolvency if the plan sponsor determines the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year. The final rule also eliminates the requirement to provide most annual updates to the notices of insolvency benefit level.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In general, a multiemployer pension plan is a collectively bargained plan involving two or more unrelated employers. This final rule deals with multiemployer plans.

Under section 4041A of ERISA, a mass withdrawal termination of a plan occurs when all employers withdraw or cease to be obligated to contribute to the plan. A plan terminated by mass withdrawal continues to pay all vested benefits from existing plan assets and withdrawal liability payments from withdrawn employers. PBGC's financial assistance to the terminated plan starts only if and when the plan sponsor determines that the plan is insolvent under section 4281(d) of ERISA. PBGC also provides financial assistance to certain plans in critical status that are not terminated or are terminated by plan amendment [1] if the plan sponsor determines that the plan is insolvent under section 4245 of ERISA.

Before 2015, financially troubled multiemployer plans entered a ''reorganization'' status if their funding was below a certain level. Plans in reorganization status were subject to certain rules affecting plan funding, benefits, and reporting and disclosure. The plan sponsor of a plan in reorganization that determined the plan was insolvent or was expected to be insolvent for a plan year was required to provide PBGC and interested parties notices regarding the plan's insolvency. The Pension Protection Act of 2006 established critical and endangered statuses for underfunded plans and provided new tools to help multiemployer plans in those statuses improve plan funding but did not repeal the reorganization rules. Section 108 of the Multiemployer Pension Reform Act of 2014 (MPRA) repealed the rules on reorganization under section 4241 of ERISA effective for plan years beginning after December 31, 2014. MPRA also amended the notice requirements under section 4245(e) of ERISA and 418E(e) of the Internal Revenue Code (Code) to replace the references to a plan in reorganization with references to a plan in critical status. These amendments did not substantively change the notice requirements.

On July 16, 2018 (at 83 FR 32815), PBGC published a proposed rule to reduce reporting and disclosure requirements for multiemployer plans that are terminated by mass withdrawal or in critical status and that are, or are expected to be, insolvent.[2] PBGC identified the proposed amendments as part of its ongoing retrospective review under Executive Order 13563 ''Improving Regulation and Regulatory Review.'' Executive Order 13563 provides for Federal regulations to use less burdensome means to achieve policy goals, and for agencies to give careful consideration to the benefits and costs of those regulations. Comments received from one commenter in response to PBGC's July 2017 Request for Information [3] support the changes to reduce notice requirements for insolvent plans.

In response to PBGC's proposed rule, two commenters submitted comments

[1] Termination of a multiemployer plan by plan amendment is determined under section 4041A(a)(1) of ERISA.

[2] In 2014, PBGC amended its regulations to reduce the number of actuarial valuations required for certain smaller terminated plans and remove certain insolvency notice and update requirements. *See* 79 FR 30459 (May 28, 2014). This rulemaking is a continuation of that effort to reduce plan burden.

[3] PBGC Regulatory Planning and Review of Existing Regulations, Request for Information (82 FR 34619, July 26, 2017).

generally supporting PBGC's efforts to reduce regulatory burden. These commenters also made some suggestions and recommendations for changes. In response to the comments, PBGC is making modifications to the forms and instructions associated with this final rule, but the final rule is substantially the same as the proposed rule. The public comments, PBGC's responses, including modifications to the forms and instructions, and the provisions of this final rule are discussed below.

Regulatory Changes

Annual Valuation Requirement

PBGC's regulation on Termination of Multiemployer Plans (29 CFR part 4041A) establishes rules for the administration of multiemployer plans that have terminated by mass withdrawal, including basic duties of plan sponsors of plans terminated by mass withdrawal. Among the requirements, the plan sponsor of a plan terminated by mass withdrawal must value the plan's nonforfeitable benefits and assets as of the last day of the plan year in which the plan terminates and the last day of each plan year thereafter. The details of the annual actuarial valuation requirement are provided in subpart B of PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The plan sponsor of a plan terminated by mass withdrawal uses the annual actuarial valuation to determine whether the value of nonforfeitable benefits exceeds the value of assets. If benefits exceed assets, the plan may need to reduce benefits. If no benefits are subject to reduction, the plan sponsor will continue to make periodic determinations of plan solvency. The final rule revises § 4041A.25 of the multiemployer termination regulation to clarify the timing of the plan sponsor's determinations of plan solvency by combining similar provisions to eliminate repetition and by removing potentially confusing language.

The plan sponsor of a plan in critical status must also make determinations of plan solvency. If the plan sponsor determines under section 4245(d) of ERISA that the plan is expected to be insolvent for a plan year, the plan sponsor must file a notice with PBGC, including a copy of the most recent actuarial valuation for the plan. PBGC uses the annual actuarial valuation to estimate the liabilities PBGC will incur when the plan becomes insolvent and for purposes of its financial statements.

The final rule reduces the number of plans terminated by mass withdrawal that are required to prepare an annual actuarial valuation. Section 4041A.24 of the multiemployer termination regulation provides that if the value of nonforfeitable benefits for a plan terminated by mass withdrawal is $25 million or less as determined for a plan year, the plan sponsor may use the actuarial valuation for the next two years and perform a new actuarial valuation for the third plan year. The final rule increases the threshold requirement for plan sponsors and allows them to use less frequent actuarial valuations. A plan sponsor may use an actuarial valuation for 5 years if the present value of the plan's nonforfeitable benefits is $50 million or less and be in compliance with the statutory requirement that there be an annual written determination of the value of the plan's nonforfeitable benefits and the plan's assets.

If the present value of a plan's nonforfeitable benefits exceeds $50 million, the plan sponsor continues to be required to perform actuarial valuations annually.[4] Plans may move in and out of the 5-year or annual valuation cycle, as applicable, as the value of nonforfeitable benefits changes. Thus, a plan sponsor that had been using an actuarial valuation for 5 years is required to perform actuarial valuations annually if the most recent actuarial valuation indicates that the present value of the plan's nonforfeitable benefits exceeds $50 million. Similarly, a plan sponsor that had been performing the actuarial valuation annually may use the actuarial valuation for 5 years if the most recent actuarial valuation shows the present value of the plan's nonforfeitable benefits to be $50 million or less.

To estimate PBGC's multiemployer plan liabilities, PBGC is adding the annual actuarial valuation requirement for plan sponsors of insolvent plans receiving financial assistance from PBGC (whether terminated or not terminated) and plan sponsors of plans terminated by plan amendment that are expected to become insolvent.[5] The provision allowing smaller plans to use less frequent actuarial valuations is available to these plan sponsors. In addition, where the present value of the plan's nonforfeitable benefits is $50 million or less, a plan receiving financial assistance from PBGC may comply with the actuarial valuation requirement by filing alternative information as specified in valuation instructions on PBGC's website.

SUMMARY OF ACTUARIAL VALUATION FILING REQUIREMENTS

Size of plan according to most recent actuarial valuation	Frequency of actuarial valuation: terminated plans and insolvent plans	Alternative information permitted to be filed: plans receiving financial assistance
Present Value of Plan's Nonforfeitable Benefits is $50 Million or Less	Every 5 Years	Yes.
Present Value of Plan's Nonforfeitable Benefits Exceeds $50 Million	Each Year	No.

PBGC received two comments with respect to its proposed changes to the actuarial valuation filing requirements. One commenter supported PBGC's proposed change to allow plan sponsors of plans terminated by mass withdrawal to use an actuarial valuation for 5 years if the present value of the plan's nonforfeitable benefits is $50 million or less. A second commenter raised concerns about the annual actuarial valuation requirement for plan sponsors of insolvent plans receiving financial assistance from PBGC. The commenter suggested that plan sponsors of plans receiving financial assistance from PBGC be able to comply with the actuarial valuation requirement by filing every 5 years the alternative information specified in instructions. The commenter stated that requiring actuarial valuations from plan sponsors of insolvent plans with nonforfeitable benefits exceeding $50 million is not an effective use of PBGC's limited resources.

[4] No valuation is required for a plan year in which the plan is closed out in accordance with subpart D of part 4041A.

[5] Section 4041A.24(a)(2) of PBGC's termination regulation currently excludes plans receiving financial assistance from PBGC from the annual actuarial valuation requirement.

PBGC considered the comment, PBGC's need for data to measure its liabilities, and the minimal cost of requiring plans to file actuarial valuations, and decided to adopt in the final rule its proposed changes to the annual actuarial valuation requirements. The final rule enables PBGC to continue to have reasonably reliable data to measure its liabilities, while reducing burden on plans that present smaller exposure to PBGC. While PBGC currently obtains actuarial valuations for plans receiving financial assistance by contacting plan sponsors, a change in process is needed because of the increasing number of insolvent plans. The final rule requires a plan sponsor to file the plan's actuarial valuation or alternative valuation information with PBGC within 180 days after the end of the plan year. Having plans file the actuarial valuation or alternative valuation information within that time period provides for a more efficient process for plan sponsors and PBGC and is a more effective use of PBGC's resources.

The final rule also adopts the proposed rule's clarifications and other editorial changes to part 4041A.

Withdrawal Liability Payments

The plan sponsor of a multiemployer plan is required to determine and collect withdrawal liability in accordance with section 4219 of ERISA. The plan sponsor assesses withdrawal liability by issuing a notice to an employer, including the amount of the employer's liability and a schedule of payments. The plan sponsor of a plan terminated by mass withdrawal must file with PBGC a certification that notices have been provided to employers.[6]

PBGC uses information about withdrawal liability payments and settlements, and whether employers have withdrawn from the plan but have not yet been assessed withdrawal liability, to estimate PBGC's multiemployer liabilities for purposes of its financial statements and to provide financial assistance to plans.[7] It is particularly important for PBGC to identify all sources of available funding given the declining financial position of the multiemployer program. In the year ended September 30, 2018, there were 78 insolvent plans that received financial assistance from PBGC and 64 terminated plans not yet receiving financial assistance.[8] The number of plans receiving and expected to receive financial assistance led PBGC to examine the way it obtains withdrawal liability information.

PBGC's rulemaking requires plan sponsors of plans subject to the actuarial valuation requirement (plans terminated by mass withdrawal, plans terminated by plan amendment that are expected to become insolvent, and insolvent plans receiving financial assistance from PBGC (whether terminated or not terminated)), to file with PBGC information about withdrawal liability, in the aggregate and by employer, that the plan has or has not yet assessed withdrawn employers. The information is specified in the withdrawal liability instructions on PBGC's website. For each employer not yet assessed withdrawal liability, information includes the name of the employer, contribution owed in the plan year before withdrawal, and the reasons the employer has not yet been assessed withdrawal liability. For each employer assessed withdrawal liability, information includes the name of the employer and whether there are scheduled periodic payments or there has been a lump-sum settlement. For periodic payments, information includes the start date, end date, frequency of payment (monthly, quarterly, annually), amount of payment, and whether the employer is current on making its payments. For lump sum settlements, information includes the amount and date of payment. To satisfy the filing requirement for employers assessed withdrawal liability, a plan sponsor may choose to file documents already prepared containing the withdrawal liability information for each employer, such as withdrawal liability notices setting forth scheduled payments or withdrawal liability settlement agreements.

The final rule requires a plan sponsor to file the withdrawal liability information with PBGC within 180 days after the earlier of the end of the plan year in which the plan terminates or becomes insolvent and each plan year thereafter. If a plan sponsor has previously filed the withdrawal liability information with PBGC, the plan sponsor may satisfy the filing requirement by submitting a statement that there is no change in the information from what was filed in a previous year. Having plan sponsors file the withdrawal liability information electronically and within the time period provides for an efficient process for plan sponsors and PBGC.

The two commenters expressed concerns about the scope of the withdrawal liability information required to be filed with PBGC, including whether a plan is required to provide information as to its entire historical experience. In response to these comments, PBGC is modifying the withdrawal liability instructions to clarify that withdrawal liability information for plan years ending before the effective date of the final rule will not be required to be filed. For a plan year filing, information will be required for each employer that withdrew during the plan year and has not yet been assessed withdrawal liability. For each employer that has been assessed withdrawal liability, information will be required on payments received in the plan year and/or expected to be received in future plan years. In addition, PBGC is clarifying in the withdrawal liability instructions that a plan sponsor is not required to file withdrawal liability information already filed with PBGC. In December 2018, PBGC sent a withdrawal liability survey to plan sponsors of terminated plans and insolvent plans with 500 or more participants to obtain information about withdrawal liability assessed and not yet assessed withdrawn employers.[9] The information obtained from this survey will provide PBGC information about withdrawal liability that contributing employers owe or owed in prior plan years.

The commenters also expressed concerns about the withdrawal liability information becoming publicly available, especially with respect to individual settlement of withdrawal liability and withdrawal liability not yet assessed withdrawn employers. One commenter suggested that PBGC collect aggregated information, or, if PBGC collects information about a given employer's withdrawal liability, that reasonable safeguards be put in place to ensure the protection of confidential and proprietary information. PBGC considered these comments and decided to adopt in the final rule the proposed amendment to require filing of withdrawal liability information and to modify the withdrawal liability instructions. As explained above, the withdrawal liability information is required to be filed in the aggregate and on an employer basis. PBGC needs this information, including by employer, to estimate with more precision PBGC's

[6] *See* 29 CFR 4219.17.

[7] PBGC may prescribe reporting requirements for terminated plans under section 4041A(f)(2) of ERISA.

[8] *See* PBGC FY 2018 Annual Report, page 93 at *https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.*

[9] OMB control number 1212–0071 (expires November 30, 2021).

current and projected future financial assistance needs and the financial position of the multiemployer insurance program. PBGC will use employer information to corroborate filed information to financial assistance requests and other plan records, which will allow for more utility of information received. PBGC's rules providing and restricting access to its records are set forth in PBGC's regulation on Examination and Copying of PBGC Records (29 CFR part 4901). If PBGC receives a request for confidential information, it notifies the submitter of the records, and affords them a reasonable period of time to object to the disclosure, pursuant to PBGC procedures and as required under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information. If PBGC decides not to sustain a submitter's objection in any request, it provides the submitter with a written statement explaining why it has determined to disclose the information within a reasonable number of days before a specified disclosure date. PBGC is adding this explanation about its rules providing and restricting access to records to the Paperwork Reduction Act notice included with the withdrawal liability instructions.

Finally, one of the commenters stated that the information collected on why employers may not have been assessed withdrawal liability suggests that PBGC may use the information for purposes outside of its authority. PBGC's authority for requiring withdrawal liability information to be filed by terminated plans and insolvent plans and use of the information are amply explained in this preamble and in the supporting statement for the information collection.

Terminated Plan and Insolvent Plan Notices

The plan sponsor of a multiemployer plan terminated by mass withdrawal must make determinations of insolvency annually in accordance with section 4281 of ERISA and the plan sponsor of a multiemployer plan in critical status must make determinations of insolvency in accordance with section 4245(d) of ERISA. When the plan sponsor of a multiemployer plan determines that the plan's resources are not sufficient to pay the promised level of benefits stated in the plan when due during the plan year, the plan sponsor must suspend benefits above the amount that assets will cover. However, benefits may not be reduced to an amount less than the PBGC guarantee level. Plan sponsors that are not able to pay benefits at the promised level of benefits stated in the plan are required to notify PBGC and plan participants and beneficiaries.

The notice requirements for plans that have terminated by mass withdrawal are provided under subpart D of PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281). Similar notice requirements are provided for plans that are in critical status under PBGC's regulation on Notice of Insolvency (29 CFR part 4245). Under the latter, in addition to notifying PBGC and participants and beneficiaries, plan sponsors must notify other interested parties, including employers required to contribute to the plan and employee organizations that, for collective bargaining purposes, represent participants employed by such employers.

There are two types of notice that plan sponsors must provide: a ''notice of insolvency,'' stating the plan year that the plan is insolvent or is expected to be insolvent, and a ''notice of insolvency benefit level,'' stating the level of benefits that will be paid during a plan year in which a plan is insolvent. The final rule requires the plan sponsor of a critical status plan or of a plan terminated by mass withdrawal to provide notices of insolvency if it determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year. The timing of the delivery of the notice of insolvency and the notice of insolvency benefit level is the same—by the later of 90 days before the beginning of the insolvency year or 30 days after the date the insolvency determination is made. In addition, the final rule allows the plan sponsor to provide one combined notice for the same insolvency year.

PBGC's regulations currently require plan sponsors to provide the notice of insolvency benefit level annually. PBGC's experience has been that virtually all multiemployer plans that become insolvent will remain so. Thus, once a plan sponsor has provided the initial notice of insolvency benefit level, there is little need to require the plan sponsor to provide similar subsequent notices. Consequently, PBGC's final rule eliminates most of the annual updates to the notices of insolvency benefit level. The plan sponsor is required to provide updated notices to PBGC and to all participants and beneficiaries only if there is a change in the amount of benefits paid that affects participants and beneficiaries generally. If a participant or beneficiary enters pay status or is reasonably expected to enter pay status during the insolvency year, or there is a change in benefit level that affects only one participant or beneficiary or a participant class, a notice is only required to be provided to PBGC and to each affected person. For example, in the latter case, if a participant enters pay status or a participant's death results in the payment of benefits to the participant's beneficiary, only PBGC and those affected participants and beneficiaries are provided notices. One commenter encouraged PBGC to finalize these changes to eliminate redundant notice requirements for terminated plans and insolvent plans.

Plan sponsors are required to electronically file notices of termination, notices of insolvency, and notices of insolvency benefit level.[10] The final rule moves the content requirements for these notices filed with PBGC from the regulations to instructions available on PBGC's website. PBGC generally considers it preferable to describe information to be filed only in the filing instructions, and not in the regulation prescribing the filing, to avoid having two authoritative descriptions of the same requirements and to make it easier for filers to find the information they need in one place.

One commenter expressed concern that the approach of moving information from the rule to instructions will not give interested parties enough notice about changes or the opportunity to comment on recommended changes. PBGC does not agree. Although changes to the forms and instructions need not always go through notice and comment rulemaking under the Administrative Procedure Act, they often would still be open to public comment and reviewed by OMB under the Paperwork Reduction Act (PRA). The PRA requires two sequential public notices to be published in the **Federal Register**, each with their own comment periods, resulting in a total of 90 days for the public to comment. PBGC posts Paperwork Reduction Act submissions on its website and generally flags material changes to forms and instructions in its regular ''What's New'' postings. Moving the information to the forms and instructions will allow PBGC to be more flexible in responding to future developments, such as changes in information technology.

The final rule also makes changes to the contents of the notice of insolvency and notice of insolvency benefit level by eliminating outdated information and,

[10] Section 4000.3(b)(4) of PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention requires, with exceptions, filings to PBGC under parts 4041A, 4245, and 4281 to be made electronically in accordance with the instructions on PBGC's website, except as otherwise provided by PBGC.

consistent with MPRA, by removing references to reorganization in the notice of insolvency regulation. The final rule changes the permissible methods of issuance to alternate payees for the notices in parts 4245 and 4281 to exclude the methods of posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. The final rule also adopts the proposed rule's clarifications and other editorial changes to parts 4245 and 4281.

Application for Financial Assistance

The plan sponsor of a multiemployer plan must apply to PBGC for financial assistance if the plan sponsor determines that the plan's resource benefit level will be below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year. Section 4281.47 of PBGC's duties of plan sponsor regulation requires a plan sponsor to file an initial application with PBGC at the same time that it files a notice of insolvency benefit level. When the plan sponsor determines an inability to pay guaranteed benefits for any month, the plan sponsor must file a recurring application within 15 days after the plan sponsor makes the determination.

To provide PBGC adequate time to review applications for financial assistance, the final rule requires an initial application to be filed no later than 90 days before the first day of the month for which the plan sponsor has determined that the resource benefit level will be below the level of guaranteed benefits. The final rule requires a recurring application to be filed as soon as practicable after the plan sponsor determines the plan will be unable to pay guaranteed benefits when due for a month and makes other editorial changes. The contents of the applications for financial assistance are moved from the regulations to instructions on PBGC's website. One commenter suggested that the final rule require a statement to be added to the annual funding notice when a plan sponsor submits an application for financial assistance to alert participants about the status of the plan. Because the annual funding notice is an ERISA title I disclosure, PBGC does not have the authority to require such a statement. However, as discussed earlier in the preamble, the notice of insolvency and notice of insolvency benefit level contain similar information to notify participants about the solvency of the plan and, under the final rule, are required to be issued by the later of 90 days before the beginning of the insolvency year, or 30 days after the date the insolvency determination is made.

Executive Orders 12866, 13563, and 13771

PBGC has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866 and Executive Order 13771. Accordingly, this final rule is exempt from Executive Order 13771 and OMB has not reviewed the rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is associated with PBGC's ongoing retrospective review program to identify and ameliorate inconsistencies, inaccuracies, and requirements made irrelevant over time.

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this final rule and has concluded that the amendments to the annual actuarial valuation requirements and notice of insolvency and notice of insolvency benefit level will reduce costs for multiemployer plans by approximately $540,400. The analysis is as follows.

Annual Actuarial Valuation Requirement

PBGC has estimated the value of this final rule for the annual actuarial valuation requirements for plans terminated by mass withdrawal that are not insolvent. PBGC has assumed an annual actuarial valuation cost of $12,000 per plan for plans whose nonforfeitable benefits have a present value of $25 million or less and a cost of $30,000 per plan for plans whose nonforfeitable benefits have a present value in the range of $25 to $50 million.[11] In the year ended September 30, 2018, there were 64 terminated plans that were not insolvent. Of that total, there were 46 plans whose nonforfeitable benefits have a present value of $25 million or less that will be able to use an actuarial valuation for 5 years instead of 3 years for annual savings of approximately $73,600 ($46 \times \$12{,}000 \times .1333$ (1/3–1/5)) and 9 plans whose nonforfeitable benefits have a present value in the range of $25 to $50 million that will be able to use an actuarial valuation for 5 years instead of 1 year for annual savings of approximately $216,000 ($9 \times \$30{,}000 \times .8$ (1–1/5)). PBGC estimates annual aggregate savings of approximately $289,600 to these plans. In the year ended September 30, 2018, there were 78 insolvent plans. Of that total, there were 14 insolvent plans whose nonforfeitable benefits have a present value exceeding $50 million. As PBGC currently obtains actuarial valuations from these insolvent plans and provides financial assistance for the cost of performing the actuarial valuations, PBGC believes there is no additional cost under this final rule for performing insolvent plan actuarial valuations.

The savings under the final rule are offset by the annual cost of the actuarial valuation and alternative valuation filing requirements. PBGC estimates that each year, approximately 34 plans will file actuarial valuations and approximately 12 plans will file alternative valuation information. As discussed below under the Paperwork Reduction Act analysis, PBGC estimates an annual aggregate hour burden of 20 hours at an estimated dollar equivalent of $1,500 and an annual aggregate cost burden of $8,000.

The annual aggregate savings offset by the annual cost of the filing requirements is $280,100 ($289,600 − $1,500 − $8,000).

Withdrawal Liability Filing

Under the final rule, PBGC expects to receive withdrawal liability information from approximately 140 plans. As discussed below under the Paperwork Reduction Act analysis, PBGC estimates an annual hour burden of 140 hours at an estimated dollar equivalent of $10,500 and an annual cost burden of $56,000.

Annual Notice Updates

As discussed below under the Paperwork Reduction Act analysis, PBGC estimates that the annual hour burden of preparing the notice of insolvency and notice of insolvency benefit level without the final rule is approximately 1,320 hours (20 + 1,300) at an estimated dollar equivalent of $99,000 and the annual aggregate cost is

[11] The cost of an actuarial valuation varies greatly by plan size. Based on plan actuary experience, an actuarial valuation for a smaller plan where the present value of the plan's nonforfeitable benefits is $50 million or less may cost approximately $10,000 to $35,000.

approximately $627,400 ($12,000 + $615,400). This estimate is based on an estimated 11 plans required to issue the notice of insolvency and 55 plans required to issue an annual update to the notice of insolvency benefit level. Allowing plans to issue a combined notice and eliminating most of the annual updates to the notice of insolvency benefit level reduces the annual hour burden to 256 hours (16 + 240) at an estimated dollar equivalent of $19,200 and the annual aggregate cost to $380,400 ($10,000 + $370,400), saving plans approximately $326,800 ($99,000 − $19,200 + $627,400 − $380,400).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present a regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations [12] and is consistent with certain requirements in title I of ERISA [13] and the Code,[14] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[15]

Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact on small entities of the proposed amendments. PBGC did not receive any such comments.

Certification

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Based on data for the 2018 fiscal year, PBGC estimates that only 15 small plans of the approximately 1,400 plans covered by PBGC's multiemployer program will be required to file withdrawal liability information and an actuarial valuation or alternative valuation information under the final rule. While this is not a substantial number of small plans, the final rule provides less burdensome filing requirements for small plans. Most small plans are not required to file actuarial valuations. An estimated 12 of the small plans are insolvent and have nonforfeitable benefits less than $50 million, enabling these plans to file alternative valuation information. In addition, the final rule will reduce administrative burden for preparing notices for terminated plans and insolvent plans, including small plans. An estimated three small plans will be relieved of the burden to prepare and distribute an annual notice of insolvency benefit level update to participants and beneficiaries. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

Paperwork Reduction Act

PBGC is submitting the information requirements under this final rule to the Office of Management and Budget (OMB) under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The collection of information in part 4041A is approved under control number 1212–0020 (expires November 30, 2021). PBGC estimates that without the final rule there would be 2,111 notices and responses and that the notice of termination and other requirements in part 4041A would have an annual burden of 69 hours and an annual cost of $50,000.

PBGC estimates that the changes to file withdrawal liability information electronically will have a minimal hour and cost burden as it is expected that the information is easily accessible and that most plans will use documents already prepared containing withdrawal liability information. PBGC estimates that approximately 140 plans will file withdrawal liability information and that it will take each plan sponsor approximately 2 hours to electronically file the information. PBGC further estimates that the filings will be completed by pension fund office staff (50%) and outside attorneys (50%). The total hour burden is approximately 140 hours of pension fund office time at an estimated dollar equivalent of $10,500 (based on an assumed hourly rate of $75 for administrative, clerical, and supervisory time). The total cost burden is approximately $56,000 (based on 140 contracted hours assuming an average hourly rate of $400).

PBGC expects that an estimated 34 plans (23 plans with nonforfeitable benefits that exceed $50 million plus 11 plans with nonforfeitable benefits of $50 million or less) will file actuarial valuations and that it will take each plan 30 minutes to file the information electronically (approximately 17 hours for 34 plans). PBGC expects that an estimated 12 plans receiving financial assistance from PBGC will file alternative valuation information and that it will take each plan 2 hours to file the information electronically (approximately 24 hours for 12 plans). PBGC further estimates that the filings will be completed by pension fund office staff (50%) and outside attorneys (50%). The total estimated hour burden to file the actuarial valuations and to complete and file the alternative valuation information is approximately 20 hours of pension fund office time at an estimated dollar equivalent of $1,500 (based on an assumed hourly rate of $75 for administrative, clerical, and supervisory time). PBGC estimates the total cost burden is $8,000 (based on approximately 20 contracted hours assuming an average hourly rate of $400).

PBGC estimates that with the final rule there will be approximately 2,300 notices and responses each year and that the total annual burden of the collection of information is an hour burden of about 229 hours for pension

[12] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[13] *See, e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[14] *See, e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[15] *See, e.g.,* Department of Labor's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

fund office time (69 + 140 + 20) at an estimated dollar equivalent of $17,175 and a cost burden for work by outside consultants of $114,000 ($50,000 + $56,000 + $8,000).

The collection of information in part 4245 is approved under control number 1212–0033 (expires November 30, 2021). PBGC estimates that only 1 plan will issue new notices of insolvency under part 4245 and that each year there will be 1,038 notices or combined notices issued to participants and beneficiaries, PBGC, and other interested parties. PBGC estimates that without the final rule the annual hour burden would be 20 hours and the annual cost burden would be $12,000. The final rule will reduce the burden by allowing plans to combine the notice of insolvency and the notice of insolvency benefit level and by eliminating most of the annual updates to participants and beneficiaries. PBGC estimates that the final rule will reduce the annual hour burden to 16 hours of pension fund office time at an estimated dollar equivalent of $1,200 and the annual cost burden for work by outside consultants to $10,000.

The collection of information in part 4281 is approved under control number 1212–0032 (expires November 30, 2021). PBGC expects to receive the following notices under part 4281: 1 notice of benefit reduction; 10 notices of insolvency; 55 notices of insolvency benefit level; 10 initial applications for financial assistance; and 300 non-initial applications for financial assistance. PBGC estimates that without the final rule the annual hour burden would be 1,300 hours at an estimated dollar equivalent of $97,500 and the annual cost burden would be $615,400. Under the final rule, most of the annual updates to the notice of insolvency benefit level will be eliminated unless there is a change in benefit level. PBGC estimates the change will reduce the number of plans issuing notices of insolvency benefit level from 55 plans to approximately 5 plans. PBGC estimates that 13,826 notices and applications will be issued annually under part 4281. PBGC estimates that the final rule will reduce the annual hour burden of pension fund office time to 240 hours at an estimated dollar equivalent of $18,000 and the annual cost burden for work by outside consultants to $370,400.

List of Subjects in 29 CFR Parts 4041A, 4245, and 4281

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

For the reasons given above, PBGC is amending 29 CFR parts 4041A, 4245, and 4281 as follows:

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

■ 1. The authority citation for part 4041A is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1441.

■ 2. In § 4041A.2:
■ a. Revise the introductory text;
■ b. Remove the phrase ''In addition, for purposes of this part:'';
■ c. Add in alphabetical order a definition for ''Actuarial valuation'';
■ d. Amend the definition of ''Available resources'' by removing '', for a plan year,'';
■ e. Amend the definition of ''Benefits subject to reduction'' by removing ''the PBGC's'' and adding in its place ''PBGC's'';
■ f. Amend the definition of ''Financial assistance'' by removing ''the PBGC'' and adding in its place ''PBGC'';
■ g. Amend the definition of ''Insolvency benefit level'' by removing ''the PBGC'' and adding in its place ''PBGC'';
■ h. Amend the definition of ''Insolvent'' by removing in the first sentence ''that a plan is'' and by removing the second sentence; and
■ i. Amend the definition of ''Nonguaranteed benefits'' by removing ''the PBGC's'' and adding in its place ''PBGC's''.

The revision and addition read as follows:

§ 4041A.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, ERISA, insurer, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of part 4281 of this chapter.

* * * * *

§ 4041A.11 [Amended]

■ 3. In § 4041A.11:
■ a. Amend paragraph (a) by removing ''A Notice of Termination shall be filed with the PBGC'' and adding in its place ''A notice of termination must be filed with PBGC'';
■ b. Amend paragraph (b) by:
■ i. In the paragraph heading, removing ''shall'' and adding in its place ''must''; and
■ ii. Removing ''shall sign and file the Notice'' and adding in its place ''must sign and file the notice'';
■ c. Amend paragraphs (c)(1) and (2) by removing ''the Notice shall be filed with the PBGC'' and adding in its place ''the notice must be filed with PBGC''; and
■ d. Amend paragraph (d) by removing ''Filings to PBGC'' and adding in its place ''Filings with PBGC''.

■ 4. Revise § 4041A.12 to read as follows:

§ 4041A.12 Contents of notice.

(a) *Information to be contained in notice.* A notice of termination under § 4041A.11 required to be filed with PBGC must contain the information and certification specified in the instructions for the notice of termination on PBGC's website (*www.pbgc.gov*).

(b) *Additional information.* In addition to the information required under paragraph (a) of this section, PBGC may require the submission of any other information that PBGC determines is necessary for review of a notice of termination.

§ 4041A.21 [Amended]

■ 5. In § 4041A.21:
■ a. Amend the first sentence by removing ''shall'' and adding in its place ''must''; and
■ b. Amend the second sentence by removing ''shall be'' and adding in its place ''is''.

■ 6. In § 4041A.23:
■ a. Revise the section heading;
■ b. Designate the undesignated text as paragraph (a) and add a heading for newly designated paragraph (a);
■ c. Amend newly designated paragraph (a) by:
■ i. Removing ''the PBGC'' and adding in its place ''PBGC'';
■ ii. Removing ''shall be responsible for determining, imposing and collecting'' and adding in its place ''must determine, give notice of, and collect''; and
■ iii. Removing ''part 4219, subpart C,'' and adding in its place ''subpart C of part 4219''; and
■ d. Add paragraph (b).

The revision and additions read as follows:

§ 4041A.23 Withdrawal liability.

(a) *Collection of withdrawal liability.*

* * *

(b) *Filing of withdrawal liability information.* For each employer that has withdrawn from the plan, the plan sponsor must file with PBGC, not later than 180 days after the end of the plan year in which the plan terminates and

each plan year thereafter, the information specified in the withdrawal liability instructions on PBGC's website (*www.pbgc.gov*).

■ 7. Revise § 4041A.24 to read as follows:

§ 4041A.24 Plan valuations and monitoring.

(a) *Annual valuation requirement.* The plan sponsor of a plan must have actuarial valuations performed in accordance with this section and with subpart B of part 4281 of this chapter.

(1) *Termination year valuation.* The plan sponsor of a plan must have an actuarial valuation performed for the plan for the plan year in which the plan terminates.

(2) *High-obligation valuations.* If the present value of a plan's nonforfeitable benefits exceeds $50 million according to the most recent actuarial valuation under this paragraph (a), the plan sponsor must have an actuarial valuation performed for the plan for each plan year.

(3) *Low-obligation valuations.* If the present value of a plan's nonforfeitable benefits does not exceed $50 million according to the most recent actuarial valuation under this paragraph (a), the plan sponsor may treat that actuarial valuation as the actuarial valuation for each of the four plan years following the plan year for which the actuarial valuation was performed.

(4) *Timing and filing.* Each actuarial valuation under this paragraph (a) must be performed within 150 days after the end of the plan year for which it is performed and must be filed with PBGC within 180 days after the end of that plan year in accordance with the valuation instructions on PBGC's website (*www.pbgc.gov*).

(5) *Exception for plans closing out.* Notwithstanding paragraphs (a)(1) through (4) of this section, no actuarial valuation is required for the plan year in which a plan closes out under subpart D of this part.

(b) *Plan monitoring; benefit reductions*—(1) *Applicability.* This paragraph (b) applies to a plan that is not receiving financial assistance from PBGC for the plan year following the plan year for which an actuarial valuation is performed under paragraph (a) of this section.

(2) *Funding level determination.* Upon the plan sponsor's receipt of each actuarial valuation under paragraph (a) of this section, the plan sponsor must determine whether the value of nonforfeitable benefits exceeds the value of plan assets (including withdrawal liability claims). If it does, then the plan sponsor must—

(i) Amend the plan to reduce benefits subject to reduction (if any) in accordance with the procedures in subpart C of part 4281 of this chapter to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits or, if that result cannot be achieved, to the maximum extent possible; and

(ii) If, after implementing the provisions of paragraph (b)(2)(i) of this section, the plan's assets are insufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits, make determinations of plan solvency in accordance with § 4041A.25.

(3) *Notices of benefit reduction.* The plan sponsor of a plan that is amended to reduce benefits under paragraph (b)(2)(i) of this section must provide participants and beneficiaries and PBGC notice of the benefit reduction in accordance with § 4281.32 of this chapter.

(c) *Alternative method of compliance*—(1) *Applicability.* This paragraph (c) applies to a plan that meets both of the following requirements—

(i) The plan is receiving financial assistance from PBGC for the plan year following the plan year for which an actuarial valuation is required under paragraph (a) of this section.

(ii) The present value of the plan's nonforfeitable benefits does not exceed $50 million according to the most recent actuarial valuation under paragraph (a) of this section.

(2) *Alternative compliance requirements.* A plan sponsor is considered to comply with the actuarial valuation and filing requirements of paragraph (a) of this section if both—

(i) The plan sponsor files with PBGC the information in paragraph (c)(3) of this section within the time required for filing the actuarial valuation under paragraph (a)(4) of this section; and

(ii) If, within 90 days after the plan sponsor makes the filing described in paragraph (c)(2)(i) of this section, PBGC requests other information reasonably required to determine the plan's assets and liabilities, the plan sponsor files such other information within 60 days after PBGC's request.

(3) *Information to be provided.* The information the plan sponsor must file with PBGC under paragraph (c)(2)(i) of this section is all of the following:

(i) The most recent summary plan description of the plan or the date the document was previously filed with PBGC.

(ii) The most recent actuarial valuation of the plan or the date the document was previously filed with PBGC.

(iii) Information reasonably necessary for PBGC to prepare an actuarial valuation as specified in the valuation instructions on PBGC's website (*www.pbgc.gov*).

■ 8. In § 4041A.25:

■ a. Revise paragraphs (a) and (b);

■ b. Amend paragraph (c) by removing ''shall'' and adding in its place ''must''; and

■ c. Revise paragraph (d).

The revisions read as follows:

§ 4041A.25 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* A plan that has no benefits subject to reduction and has assets insufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits must make periodic determinations of plan solvency in accordance with this paragraph (a). No later than six months before the beginning of the applicable plan year described in this paragraph (a), or as soon as practicable after the plan sponsor determines the applicable plan year, and no later than six months before each plan year thereafter, the plan sponsor must determine in writing whether the plan is expected to be insolvent for such plan year. The applicable plan year is—

(1) For a plan that had no benefits subject to reduction when it terminated, the plan year the plan terminated; or

(2) For a plan that eliminated benefits subject to reduction by amendment after termination, the plan year in which the amendment that eliminated all (or all remaining) benefits subject to reduction is effective.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan insolvency has been made under paragraph (a) of this section (or under section 4245 of ERISA), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must determine in writing whether the plan is or is expected to be insolvent for that plan year.

* * * * *

(d) *Insolvency notices.* If the plan sponsor determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year it must provide notices of insolvency and notices of insolvency benefit level to PBGC and to participants and beneficiaries in

accordance with subpart D of part 4281 of this chapter.

■ 9. Under the authority of 29 U.S.C. 1302(b)(3), revise the heading for subchapter J to read as follows:

SUBCHAPTER J—INSOLVENCY, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS

PART 4245—DUTIES OF PLAN SPONSOR OF AN INSOLVENT PLAN

■ 10. The authority citation for part 4245 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1426(e).

■ 11. Revise the heading for part 4245 to read as set forth above.

■ 12. Revise § 4245.1 to read as follows:

§ 4245.1 Purpose, scope, and filing and issuance rules.

(a) *Purpose and scope.* This part prescribes insolvency notice requirements and financial assistance requirements pertaining to critical status plans. Plan sponsors of plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA are required to file and issue similar insolvency notices under part 4281 of this chapter and withdrawal liability and actuarial valuation information under part 4041A of this chapter.

(b) *Filing and issuance rules*—(1) *Method of filing.* Filing with PBGC under this part must be made by a method permitted under the rules in subpart A of part 4000 of this chapter.

(2) *Method of issuance.* The issuance of the required notices to interested parties under this part must be made by one of the following methods—

(i) A method permitted under the rules in subpart B of part 4000 of this chapter.

(ii) For interested parties other than participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, and other than alternate payees, the plan sponsor may post the notice at participants' work sites or publish the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Except with respect to an alternate payee, notice to a participant is deemed notice to that participant's beneficiary or beneficiaries.

(3) *Filing and issuance dates.* The date that a filing is sent and the date that an issuance is provided are determined under the rules in subpart C of part 4000 of this chapter.

(4) *Where to file.* Filings with PBGC under this part must be made as described in § 4000.4 of this chapter.

(5) *Computation of time.* The time period for filing or issuance under this part must be computed under the rules in subpart D of part 4000 of this chapter.

■ 13. In § 4245.2:

■ a. Revise the introductory text;

■ b. Remove the phrase ''In addition, for purposes of this part:'';

■ c. Revise the definition of ''Actuarial valuation'';

■ d. Amend the definition of ''Available resources'' by removing '', for a plan year,'';

■ e. Amend the definition of ''Benefits subject to reduction'' by removing ''the PBGC's'' and adding in its place ''PBGC's'';

■ f. Amend the definition of ''Financial assistance'' by removing ''the PBGC'' and adding in its place ''PBGC'';

■ g. Amend the definition of ''Insolvency benefit level'' by removing ''the PBGC'' and adding in its place ''PBGC'';

■ h. Amend the definition of ''Insolvent'' by removing in the first sentence ''that a plan is'' and by removing the second sentence;

■ i. Add in alphabetical order a definition for ''Interested parties''; and

■ j. Remove the definition of ''Reorganization''.

The revisions and addition read as follows:

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Employer, ERISA, IRS, multiemployer plan, nonforfeitable benefit, PBGC, person, plan, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of part 4281 of this chapter.

* * * * *

Interested parties means, with respect to a plan—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

* * * * *

■ 14. Revise § 4245.3 to read as follows:

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* The plan sponsor of a plan that determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must file with PBGC a notice of insolvency containing the information described in § 4245.4(a) and must issue to interested parties a notice of insolvency containing the information described in § 4245.4(b). Once notices of insolvency with respect to a plan have been provided as required, no notices of insolvency need be provided with respect to the plan for any subsequent plan year. A notice of insolvency may be combined with a notice of insolvency benefit level under § 4245.5 for the same plan year.

(b) *When to provide notice.* The plan sponsor must provide the notices of insolvency under paragraph (a) of this section at the time described in § 4281.43(b) of this chapter.

■ 15. Revise § 4245.4 to read as follows:

§ 4245.4 Contents of notice of insolvency.

(a) *Notice to PBGC.* A notice of insolvency under § 4245.3 required to be filed with PBGC must contain the information and certification specified in the notice of insolvency instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notices to interested parties.* A notice of insolvency under § 4245.3 required to be given to interested parties must contain all of the following information—

(1) The information set forth in § 4281.44(b)(1) through (4) of this chapter.

(2) The estimated total amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(3) The estimated amount of the plan's available resources for the insolvency year.

■ 16. Revise § 4245.5 to read as follows:

§ 4245.5 Notice of insolvency benefit level.

(a) *Requirement of notice.* The plan sponsor of an insolvent plan must file with PBGC and issue to interested parties notices of insolvency benefit level containing the information described in § 4245.6 in each of the following circumstances—

(1) For the initial insolvency year, provide the notices of insolvency benefit level to PBGC and to interested parties.

(2) For any insolvency year following the initial insolvency year—

(i) If there is a change in the insolvency benefit level that affects plan payees generally, provide the notices of insolvency benefit level to PBGC and to plan payees (which, for purposes of this section, means participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year).

(ii) If there is a change in the insolvency benefit level that affects only one plan payee or a class of plan payees but not plan payees generally (treating commencement of a person's benefits for this purpose as a change in the insolvency benefit level for that person), provide the notices of insolvency benefit level to PBGC and to each affected plan payee.

(b) *Combined notices.* The plan sponsor may combine a notice of insolvency benefit level and a notice of insolvency under § 4245.3 for the same plan year.

(c) *When to provide notice.* The plan sponsor must provide the required notices under this section at the time described in § 4281.45(c) of this chapter.

■ 17. Revise § 4245.6 to read as follows:

§ 4245.6 Contents of notice of insolvency benefit level.

(a) *Notice to PBGC.* A notice of insolvency benefit level under § 4245.5(a) required to be filed with PBGC must contain the information and certification specified in the notice of insolvency benefit level instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notices to interested parties other than participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level under § 4245.5(a) required to be delivered to interested parties, other than to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, must include all of the following information—

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level under § 4245.5(a) required to be delivered to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given must include the information set forth in § 4281.46(b)(1) through (7) of this chapter.

■ 18. Revise § 4245.7 to read as follows:

§ 4245.7 Successor plan.

The plan sponsor of a successor plan created by a partition order under § 4233.14 of this chapter must issue to participants and beneficiaries any notice required under the partition order and is not required to file or issue notices under § 4245.3 or § 4245.5.

■ 19. Revise § 4245.8 to read as follows:

§ 4245.8 Financial assistance.

(a) *Application for financial assistance.* If the plan sponsor of a plan determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor must apply to PBGC for financial assistance pursuant to section 4261 of ERISA and in accordance with § 4281.47 of this chapter.

(b) *Actuarial valuations and withdrawal liability.* The plan sponsor of an insolvent plan or a terminated plan that is expected to become insolvent under section 4245 of ERISA must—

(1) File withdrawal liability information with PBGC in accordance with § 4041A.23 of this chapter. The filing under § 4041A.23(b) of this chapter must be not later than 180 days after the earlier of the end of the plan year in which the plan becomes insolvent or terminates and each plan year thereafter.

(2) Have performed and file with PBGC actuarial valuations in accordance with § 4041A.24 of this chapter, except that if a plan is not terminated, the termination year valuation under § 4041A.24(a)(1) of this chapter must be performed for the plan for the plan year in which the plan becomes insolvent.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

■ 20. The authority citation for part 4281 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), 1431, and 1441.

■ 21. In § 4281.2:

■ a. Revise the introductory text;

■ b. Remove the phrase ''In addition, for purposes of this part:'';

■ c. Add in alphabetical order a definition for ''Actuarial valuation'';

■ d. Amend the definition of ''Available resources'' by removing '', for a plan year,'';

■ e. Amend the definition of ''Benefits subject to reduction'' by removing ''the PBGC's'' and adding in its place ''PBGC's'';

■ f. Amend the definition of ''Financial assistance'' by removing ''the PBGC'' and adding in its place ''PBGC'';

■ g. Amend the definition of ''Insolvency benefit level'' by removing ''the PBGC'' and adding in its place ''PBGC'';

■ h. Amend the definition of ''Insolvent'' by removing in the first sentence ''that a plan is'' and by removing the second sentence; and

■ i. Amend the definition of ''Pro rata'' by removing ''shall'' and adding in its place ''must''.

The revision and addition read as follows:

§ 4281.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of this part.

* * * * *

■ 22. Revise § 4281.3 to read as follows:

§ 4281.3 Filing and issuance rules.

(a) *Method of filing.* Filing with PBGC under this part must be made by a method permitted under the rules in subpart A of part 4000 of this chapter.

(b) *Method of issuance.* The notices under this part must be issued to participants and beneficiaries by the methods provided in § 4281.32(c) for notices of benefit reductions, § 4281.43(c) for notices of insolvency, and § 4281.45(d) for notices of insolvency benefit level.

(c) *Filing and issuance dates.* The date that a filing is sent and the date that an issuance is provided are determined under the rules in subpart C of part 4000 of this chapter.

(d) *Where to file.* Filings with PBGC under this part must be made as described in § 4000.4 of this chapter.

(e) *Computation of time.* The time period for filing or issuance under this part must be computed under the rules in subpart D of part 4000 of this chapter.

§ 4281.11 [Amended]

■ 23. In § 4281.11:

■ a. Amend paragraph (a) by:

■ i. In the paragraph heading, removing ''Annual valuations'' and adding in its place ''Annual actuarial valuation'';

■ ii. Removing ''annual valuation'' and adding in its place ''annual actuarial valuation'';

■ iii. Removing ''shall be'' and adding in its place ''are''; and

■ iv. Removing ''year thereafter'' and adding in its place ''year thereafter for which an actuarial valuation is required to be performed under § 4041A.24 of this chapter''; and
■ b. Amend paragraph (b) introductory text by removing ''shall be'' and adding in its place ''is''.

§ 4281.13 [Amended]

■ 24. In § 4281.13:
■ a. Amend the introductory text by removing ''shall'' and adding in its place ''must''; and
■ b. Amend paragraph (b) by removing ''described in § 4281.14'' and by adding in its place ''under § 4044.53 of this chapter''.

§ 4281.14 [Removed and Reserved]

■ 25. Section 4281.14 is removed and reserved.

§ 4281.32 [Amended]

■ 26. In § 4281.32(c):
■ a. Amend the paragraph heading by removing ''to interested parties'' and adding in its place ''to participants and beneficiaries''; and
■ b. Remove in two places ''interested parties'' and add in their place ''participants and beneficiaries''.

■ 27. Revise § 4281.43 to read as follows:

§ 4281.43 Notice of insolvency.

(a) *Requirement of notice.* The plan sponsor of a plan that determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must file with PBGC a notice of insolvency containing the information described in § 4281.44(a) and issue to plan participants and beneficiaries a notice of insolvency containing the information described in § 4281.44(b). Once notices of insolvency with respect to a plan have been provided as required, no notice of insolvency need be provided with respect to the plan for any subsequent year. A notice of insolvency may be combined with a notice of insolvency benefit level under § 4281.45 for the same plan year.

(b) *When to provide notice.* (1) Except as provided in paragraph (b)(2) of this section, the plan sponsor must file or issue the notices of insolvency under paragraph (a) of this section by the later of—

(i) Ninety (90) days before the beginning of the insolvency year; or

(ii) Thirty (30) days after the date the insolvency determination is made.

(2) The plan sponsor may deliver the notices of insolvency under paragraph (a) of this section to participants and beneficiaries in pay status concurrently with the first benefit payment made after the date the insolvency determination is made.

(c) *Method of issuance to participants and beneficiaries.* The issuance of the notice of insolvency to participants and beneficiaries must be made by one of the following methods—

(1) A method permitted under the rules in subpart B of part 4000 of this chapter.

(2) For participants and beneficiaries, other than those in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, and other than alternate payees, the plan sponsor may post the notice at participants' work sites or publish the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Except with respect to an alternate payee, notice to a participant is deemed notice to that participant's beneficiary or beneficiaries.

■ 28. Revise § 4281.44 to read as follows:

§ 4281.44 Contents of notice of insolvency.

(a) *Notice to PBGC.* A notice of insolvency required under § 4281.43(a) to be filed with PBGC must contain the information and certification specified in the notice of insolvency instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notice to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries must contain all of the following information—

(1) The name of the plan.

(2) A statement of the plan year for which the plan sponsor has determined that the plan is or is expected to be insolvent.

(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by PBGC under section 4022A of ERISA.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

■ 29. Revise § 4281.45 to read as follows:

§ 4281.45 Notice of insolvency benefit level.

(a) *Requirement of notice.* The plan sponsor of an insolvent plan must file with PBGC a notice of insolvency benefit level containing the information described in § 4281.46(a) and issue to plan payees (which, for purposes of this section, means participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year) a notice of insolvency benefit level containing the information described in § 4281.46(b) in each of the following circumstances—

(1) Except as provided in paragraph (a)(2) of this section, for the initial insolvency year and for any insolvency year following the initial insolvency year, if there is a change in insolvency benefit level that affects plan payees generally, provide the notices of insolvency benefit level to PBGC and to plan payees.

(2) For any insolvency year following the initial insolvency year, if there is a change in the insolvency benefit level that affects only one plan payee or a class of plan payees but not plan payees generally (treating commencement of a person's benefits for this purpose as a change in the insolvency benefit level for that person), provide the notices of insolvency benefit level to PBGC and to each affected plan payee.

(b) *Combined notices.* The plan sponsor may combine a notice of insolvency benefit level under this section and a notice of insolvency under § 4281.43 for the same plan year.

(c) *When to provide notice.* (1) Except as provided in paragraph (c)(2) of this section, the plan sponsor must provide the notices under this section by the later of—

(i) Ninety (90) days before the beginning of the insolvency year; or

(ii) Thirty (30) days after the date the insolvency determination is made.

(2) The plan sponsor may deliver the notices required under this section to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given concurrently with the first benefit payment made after the date the insolvency determination is made.

(d) *Method of issuance to participants and beneficiaries.* The issuance of the notice of insolvency benefit level to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given must be made by a method permitted under the rules in subpart B of part 4000 of this chapter.

■ 30. Revise § 4281.46 to read as follows:

§ 4281.46 Contents of notice of insolvency benefit level.

(a) *Notice to PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with PBGC must contain the information and certification specified in the notice of insolvency benefit level instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notice to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level required by § 4281.45(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year must contain all of the following information—

(1) The name of the plan.

(2) The insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

■ 31. In § 4281.47:

■ a. Amend paragraph (a) by:

■ i. In the first sentence, removing ''plan sponsor determines'' and adding in its place ''plan sponsor of a plan determines'' and removing ''shall apply to the PBGC'' and adding in its place ''must apply to PBGC'';

■ ii. In the second sentence, removing ''shall'' and adding in its place ''must'' and removing ''prescribed in paragraph (b) of this section'' and adding in its place ''specified under paragraph (b) of this section and must contain the information under paragraph (c) of this section''; and

■ iii. Removing the third and fourth sentences;

■ b. Revise paragraphs (b) and (c); and

■ c. Remove paragraphs (d) and (e).

The revisions read as follows:

§ 4281.47 Application for financial assistance.

* * * * *

(b) *When, how, and where to apply*—(1) *Initial application.* Except as provided in the next sentence, a plan sponsor must apply for financial assistance no later than 90 days before the first day of the month for which the plan sponsor has determined the resource benefit level will be below the level of guaranteed benefits. If a plan sponsor cannot practicably apply for financial assistance by the date in the preceding sentence, the application must be made as soon as practicable after the plan sponsor has made the determination in the preceding sentence.

(2) *Recurring application.* A plan sponsor must apply for financial assistance as soon as practicable after the plan sponsor determines that the plan will be unable to pay guaranteed benefits when due for a month.

(3) *How and where to apply.* Application to PBGC for financial assistance must be made in accordance with the rules in subpart A of part 4000 of this chapter. See § 4000.4 of this chapter for information on where to apply.

(c) *Contents of application*—(1) *Initial application.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits must file an application that includes the information specified in the instructions for an application for initial financial assistance on PBGC's website (*www.pbgc.gov*).

(2) *Recurring application.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month must file an application that includes the information specified in the instructions for an application for recurring financial assistance on PBGC's website (*www.pbgc.gov*).

(3) *Additional information.* PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of ERISA.

Issued in Washington, DC.

William Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–08977 Filed 5–1–19; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0014]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its special local regulations relating to recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a special local regulation. Through this rulemaking the current list of recurring special local regulations is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective May 2, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0014 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *Riley.S.Jackson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Captain of the Port Sector Ohio Valley (COTP) is establishing, amending, and updating its current list