

needed to ensure adequate compliance with this statutory requirement.

The IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this [Act]." 25 U.S.C. § 2706(b)(10).

2. Advance Notice of Proposed Rulemaking

After consideration of this issue, the NIGC has determined that the appropriate course of action is to publish an Advance Notice of Proposed Rulemaking to collect further information.

Before the NIGC proceeds in this area, it intends to have the benefit of a full airing of the issues through the public comment process.

3. Request for Comments

Public comment is requested to assist the NIGC in the drafting of regulations which ensure that Indian gaming facilities are constructed and maintained in a manner which protects the environment and the public health and safety. Comment is requested on the following issues:

(a) Is it necessary for the Commission to promulgate regulations which ensure that tribal gaming facilities are constructed and maintained in a manner which protect the environment and the public health and safety? What alternative steps may exist to accomplish this objective?

(b) What other steps are currently being taken to ensure that tribal gaming facilities are constructed and maintained in a manner that adequately protects the environment and public health and safety? What is the best method of incorporating these steps into a regulatory structure implemented by the NIGC?

(c) What are the major threats to the environment and the public health and safety posed by the operation of gaming facilities on Indian lands?

(d) In promulgating regulations to ensure that tribal gaming facilities are maintained in a manner which protects the environment and the public health and safety, is it necessary to differentiate between large, mid-size and small gaming facilities?

(e) If yes, how should the Commission determine what are large, mid-size and small operations?

(f) What type of standards should apply to all gaming facilities regardless of size?

(g) How long should the Commission allow for the tribes to comply with the proposed regulations?

The Commission solicits any additional suggestions and/or

interpretations regarding the issues raised in this Advance Notice of Proposed Rulemaking.

4. Public Participation

Interested parties are invited to submit comments on any or all of these and other pertinent issues related to issuing environmental, and public health and safety regulations by June 28, 1999, in triplicate to Environment, and Public Health and Safety Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, D.C. 20005. Fax number: 202-632-7066 (not a toll-free number). All written comments submitted in response to this notice will be available for inspection and copying in the NIGC office from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday. All timely written submissions will be considered in determining the nature of any proposal.

Authority and Signature

This Advance Notice of Proposed Rulemaking was prepared under the direction of Barry W. Brandon, General Counsel, National Indian Gaming Commission, 1441 L St. N.W., Suite 9100, Washington, D.C. 20005.

Signed at Washington, D.C. this 29th day of March, 1999.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 99-10450 Filed 4-26-99; 8:45 am]

BILLING CODE 7565-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212-AA82

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The PBGC is proposing to amend its regulation on Payment of Premiums to encourage self-correction of premium underpayments. The amendments make it easier to qualify for "safe-harbor" relief from late payment penalty charges and codify the PBGC's current premium penalty policy (under which the penalty charge is lowered from 5% per month to 1% per month if a premium payor corrects an underpayment before PBGC notification).

DATES: Comments must be received on or before June 28, 1999.

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

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

SUPPLEMENTARY INFORMATION:

Background

Late Payment Penalties

Section 4007 of ERISA authorizes the PBGC to assess a late payment penalty charge for failure to pay premiums on time. Under the PBGC's regulation on Payment of Premiums (29 CFR part 4007), the penalty accrues at the rate of 5% of the unpaid amount each month, subject to a floor of \$25 on the total penalty amount. The total penalty amount may not exceed 100% of the premium that is not timely paid. The PBGC may grant a waiver of all or a portion of the penalty (e.g., upon a demonstration of good cause). The regulation also requires the payment of interest on premium underpayments.

On December 2, 1996 (at 61 FR 63874), the PBGC published a policy statement in which it adopted a two-tiered policy on penalties for late payment of premiums due for 1996 and later plan years. This policy, which lowers penalties from 5% per month to 1% per month if a premium payor corrects an underpayment before PBGC notification, is designed to encourage self-correction.

Premium Due Dates

A plan's premium due dates depend upon whether the plan is "small" or "large." Under the current regulation, the determination of whether a plan is "small" or "large" is based on the *actual* number of participants for whom premiums were payable for the prior year. This number is not necessarily the number of participants that was *reported* on the PBGC Form 1 for the prior year.

Small Plans

A small plan is a plan with fewer than 500 participants for the prior year. For

1999 and later plan years, the premium filing due date for small plans for both the flat-rate premium (for single-employer and multiemployer plans) and the variable-rate premium (for single-employer plans) is the fifteenth day of the tenth full calendar month in the premium payment year (see 63 FR 68684, Dec. 14, 1998). For calendar year plans, this date is October 15. (For convenience, the discussion in this preamble assumes that all plans are calendar year plans.)

Large Plans

For large single-employer and multiemployer plans (those with 500 or more participants for the prior year), the due date for the flat-rate premium is the last day of the second full calendar month in the premium payment year (February 28). If the number of participants for whom premiums are payable for the premium payment year is not known by February 28, the plan administrator must make an "estimated" payment by February 28 and a "reconciliation" payment by October 15. The due date for the variable-rate premium for large single-employer plans is also October 15.

Premium Forms

The plan administrator ordinarily makes the February 28 filing on PBGC Form 1-ES and must make the October 15 filing (for both large and small plans) on PBGC Form 1.

Safe-harbor Rules

The participant count for the premium payment year is generally determined as of the last day of the plan year preceding the premium payment year. Because plan administrators often do not know the exact participant count for the premium payment year by February 28 of the premium payment year, the regulation provides a safe harbor from late payment penalty charges, provided certain requirements are met. (There is no safe harbor from late payment interest charges.)

A plan administrator must do two things to qualify for the safe harbor and therefore avoid late payment penalty charges:

- By February 28 of the premium payment year, the plan administrator must pay the lesser of: (1) 90% of the flat-rate premium due for the premium payment year; or (2) 100% of the flat-rate premium that would be due for the premium payment year, if that amount were determined by multiplying the actual participant count for the prior year by the flat premium rate for the premium payment year.
- By October 15 of the premium payment year, the plan administrator must pay any

remaining portion of the flat-rate premium for the premium payment year.

For example, assume that a single-employer plan has 600 participants for 2000 and 700 participants for 2001. In order to meet the safe-harbor requirements for 2001, the plan administrator must make an estimated payment by February 28, 2001, of at least \$11,400. This amount is the lesser of 90% of the flat-rate premium due for 2001 ($700 \times \$19 \times 90\% = \$11,970$) or 100% of the flat-rate premium for 2000 ($600 \times \$19 \times 100\% = \$11,400$). (The examples in this preamble use the current single-employer plan flat-rate premium of \$19 per participant for all plan years.) The plan administrator also must make a reconciliation payment by October 15, 2001, equal to the difference between the February 28, 2001, payment and the full flat-rate premium of \$13,300 ($700 \times \19) due for 2001. Assuming that, by February 28, 2001, the plan administrator had paid the \$11,400—the minimum amount to qualify for safe-harbor relief—the plan administrator must pay the difference of \$1,900 ($\$13,300 - \$11,400$) by October 15, 2001.

Proposed Amendment—Safe-Harbor Rules

The PBGC is proposing to expand its current safe-harbor rules to encourage self-correction in three situations. The relief applies only to penalty charges. It does not affect the interest that would accrue on any underpayment of the flat-rate premium.

500-participant Threshold for PBGC Form 1-ES

Current Regulation.

Whether an estimated payment is due by February 28 depends on the *actual* participant count for the prior year, not the participant count that was reported on the prior year's Form 1.

For example, assume that a plan administrator of a plan that had always had fewer than 500 participants reports 490 participants on the plan's 2000 PBGC Form 1, which is filed on October 16, 2000 (because October 15, 2000, is a Sunday). Based on the reported participant count of 490 for 2000, the plan administrator does not make an estimated payment for 2001 by February 28, 2001, but pays the plan's full flat-rate premium for 2001 on October 15, 2001. Subsequently, the plan administrator discovers that the participant count that should have been reported for 2000 is 510. On November 15, 2001, the plan administrator files an amended PBGC Form 1 for 2000 with the additional flat-rate premium due for

the 20 participants ($(510 - 490) \times \$19 = \380). The PBGC would assess penalty and interest charges on the \$380 payment for the period October 16, 2000, through November 15, 2001. In addition, because the actual participant count for 2000 is 500 or more, the PBGC also would assess penalty and interest charges for the period March 1 through October 15, 2001 on the full flat-rate premium for 2001 (reflecting the fact that the plan's full flat-rate premium for 2001 was due February 28, 2001).

Amendment

Under the amendment, whether the PBGC would assess a late payment penalty charge for failure to make an estimated payment for the premium payment year by February 28 of the premium payment year would be determined based on the lesser of (1) the number of participants *reported* for the prior year, or (2) the *actual* number of participants for the prior year. Thus, PBGC would not assess a penalty charge for failing to make an estimated payment for the premium payment year by February 28 of the premium payment year if the number of participants *reported* for the prior year is fewer than 500. For this purpose, the number of participants reported for the prior year would be the number of participants last reported for the prior year (on the PBGC Form 1 or an amended PBGC Form 1) by February 28 of the premium payment year. The relief would apply only to penalty charges. The PBGC would continue to assess interest on any underpayment of the flat-rate premium for the period March 1 of the premium payment year through the date of payment.

Because the plan administrator in the example *reported* fewer than 500 participants on the plan's 2000 Form 1, the PBGC would not assess a penalty charge (for the period March 1 through October 15, 2001) for failing to make an estimated payment for 2001 by February 28, 2001. The PBGC still would assess interest on the flat-rate premium for 2001 for the period March 1 through October 15, 2001. (The change would not affect the penalty and interest charges assessed for the period October 16, 2000, through November 15, 2001, on the \$380 late payment for the 20 participants for 2000.)

Estimate Based on Prior Year's Form 1 Participant Count

Current Regulation

A plan can lose safe-harbor relief if the plan administrator, in computing the estimated flat-rate premium payment due on February 28 of the

premium payment year, relies on a participant count reported on the prior year's PBGC Form 1 that is later determined to be too low. For example, assume that the plan administrator of a single-employer plan reports 600 participants on the plan's 2000 PBGC Form 1, which is filed on October 16, 2000. On February 28, 2001, the plan administrator makes an estimated payment for 2001 equal to 100% of the flat-rate premium for 2000 ($600 \times \$19 \times 100\% = \$11,400$). On October 15, 2001, the plan administrator reports 800 participants on the plan's 2001 Form 1 and makes a reconciliation payment of \$3,800 ($800 \times \$19 - \$11,400$). The PBGC would assess interest on the \$3,800 reconciliation payment for the period March 1 through October 15, 2001.

Subsequently, the plan administrator discovers that 700 participants should have been reported for 2000 and, on November 15, 2001, files an amended PBGC Form 1 for 2000 with the additional flat-rate premium of \$1,900 due for the 100 participants ($100 \times \$19$). The PBGC would assess penalty and interest charges on the \$1,900 payment for the period October 16, 2000, through November 15, 2001. Under the current regulation, the plan would lose safe-harbor relief for 2001 because the payment of \$11,400 made on February 28, 2001, is neither at least 100% of the flat-rate premium for 2000 ($700 \times \$19 \times 100\% = \$13,300$) nor at least 90% of the flat-rate premium for 2001 ($800 \times \$19 \times 90\% = \$13,680$). Thus, under the current regulation, in addition to interest, the PBGC would assess a penalty charge on the \$3,800 reconciliation payment for the period March 1 through October 15, 2001.

Amendment

Under the amendment, the PBGC would determine whether the estimated payment reflected at least 100% of the prior year's participant count by using the lesser of: (1) the number of participants reported on the prior year's PBGC Form 1 or amended PBGC Form 1 (filed by February 28 of the premium payment year); or (2) the actual number of participants for the prior year. Thus, in the example, the plan would not lose safe-harbor relief for 2001 even though the plan administrator later files an amended 2000 PBGC Form 1 reporting 700 participants. The amendment would affect only penalty charges. It would not affect the interest assessed on the \$3,800 reconciliation payment for the period March 1 through October 15, 2001.

PBGC Form 1 Reconciliation Payment Underpaid or Late

Current Regulation

A plan also loses safe-harbor relief when the plan administrator timely pays the appropriate estimated payment with the PBGC Form 1-ES but fails to make the full PBGC Form 1 reconciliation payment on time. This can occur, e.g., if the plan administrator bases the reconciliation payment on a participant count that is too low or makes the reconciliation payment late.

For example, assume that the plan administrator of a single-employer plan reports 800 participants on the plan's 2000 PBGC Form 1, which is filed on October 16, 2000. On February 28, 2001, the plan administrator makes an estimated payment for 2001 of 100% of the flat-rate premium for 2000 ($800 \times \$19 \times 100\% = \$15,200$). On October 15, 2001, the plan administrator reports a participant count of 900 for 2001 and makes a reconciliation payment of \$1,900 ($900 \times \$19 - \$15,200$). The PBGC would assess interest on the \$1,900 payment for the period March 1 through October 15, 2001.

Subsequently, the plan administrator discovers that the participant count that should have been reported for 2001 is 910 and, on November 15, 2001, files an amended PBGC Form 1 for 2001 with an additional flat-rate premium of \$190 ($10 \times \$19 = \190) for the 10 participants. The PBGC would assess penalty and interest charges on the \$190 payment for the period October 16 through November 15, 2001. Under the current regulation, the plan would lose safe-harbor relief because it did not make a timely PBGC Form 1 reconciliation payment in full. Thus, the PBGC would also assess a penalty charge on \$2,090 ($910 \times \$19 - \$15,200$)—the amount by which the flat-rate premium for 2001 of \$17,290 (based on the amended November 15, 2001, PBGC Form 1) exceeds the February 28, 2001, payment of \$15,200—for the period March 1 through October 15, 2001.

Amendment

Under the amendment, payment of any balance of the flat-rate premium due for the premium payment year by October 15 of the premium payment year would no longer be a prerequisite for qualifying for safe-harbor relief. Thus, in the example, the PBGC still would assess penalty and interest charges on the \$190 payment (due for the additional 10 participants) for the period October 16 through November 15, 2001. But the plan would not lose safe-harbor relief and therefore would not be assessed a penalty charge for the

period March 1 through October 15, 2001, on \$2,090—the amount by which the flat-rate premium for 2001 (based on the amended November 15, 2001, PBGC Form 1) exceeds the February 28, 2001, payment. The amendment would not affect the interest assessed on that amount for the period March 1 through October 15, 2001.

Proposed Amendment—Late Payment Penalty Rate

Based on its experience, the PBGC proposes to codify its December 2, 1996, policy statement, in which it announced its current two-tiered penalty rate policy for 1996 and later plan years. Under this policy, which is designed to encourage self-correction, the PBGC assesses a penalty of 1% per month if the premium is paid on or before the date the PBGC issues a written notice that there is or may be a premium delinquency. If the premium is paid after the PBGC notification date, the penalty rate is 5% per month for all months. The minimum total penalty continues to be \$25, and the penalty continues to be limited to 100% of the unpaid premium. PBGC notification may take various forms, including a premium bill, a letter initiating a premium compliance review (i.e., an audit), or a letter questioning a failure to make a premium filing. The amendment clarifies that the 5% rate applies (for all months) to all persons liable for premiums for the plan (i.e., the plan administrator and, for a single-employer plan, each contributing sponsor and each member of any contributing sponsor's controlled group) once this notice is issued to any of those persons.

Miscellaneous

The proposed regulation clarifies that the penalty waiver for premium underpayments paid within 30 days after the date of a PBGC bill applies only to penalty charges accruing after the date of the bill.

The current regulation provides that the PBGC may waive all or part of a late payment penalty charge upon a demonstration of "good cause." The PBGC is proposing to change the standard to "reasonable cause" to be consistent with the standard in the PBGC's policy statements on penalties under section 4071 of ERISA (relating to penalties for failure to provide required information on time). This is only a change in terminology that is not intended to alter the substantive requirements for this waiver.

Applicability

The amendment to the safe-harbor rules would apply to PBGC

determinations issued on or after the effective date of the final rule with respect to premiums for 1999 and later plan years. The amendment to the late payment penalty rate would apply to PBGC determinations issued on or after the effective date of the final rule with respect to premiums for 1996 and later plan years.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

This rule would provide relief from premium penalties. The relief would be limited to a percentage—generally small—of a plan's premium. While this rule would result in a positive economic impact for some small entities, the number of small entities for which the impact would be significant would not be substantial. The PBGC therefore certifies under section 605(b) of the Regulatory Flexibility Act that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4007

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

For the reasons set forth above, the PBGC proposes to amend 29 CFR part 4007 as follows.

PART 4007—PAYMENT OF PREMIUMS

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

Authority: 29 U.S.C. 1302(b)(3), 1301(a), 1306, 1307.

2. Section 4007.8 is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date under § 4007.11, the PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (g) of this section. The charge will be no more than 100% of the unpaid premium. The charge will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment and is subject to a floor of \$25 (or, if less, the amount of the unpaid premium).

(1) *Penalty rate for post-1995 premium payment years.* This paragraph

(a)(1) applies to the premium for any premium payment year beginning after 1995. The penalty rate is—

(i) 1% per month (for all months) on any amount of unpaid premium that is paid on or before the date the PBGC issues a written notice to any person liable for the plan's premium that there is or may be a premium delinquency (e.g., a premium bill, a letter initiating a premium compliance review, or a letter questioning a failure to make a premium filing); or

(ii) 5% per month (for all months) on any amount of unpaid premium that is paid after that date.

(2) *Penalty rate for pre-1996 premium payment years.* This paragraph (a)(2) applies to the premium for any premium payment year beginning before 1996. The penalty rate is 5% per month (for all months) on any amount of unpaid premium.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) *Reasonable cause waiver.* The PBGC may, upon any demonstration of reasonable cause, waive all or part of a late payment penalty charge.

(d) *Waiver on PBGC's own initiative.* The PBGC may, on its own initiative, waive all or part of a late payment penalty charge.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Safe-harbor relief for certain large plans.* This waiver applies to the premium for any premium payment year beginning after 1998 in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if fewer than 500 participants are reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(g) *Safe-harbor relief for plans that make minimum estimated payment.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under

§ 4007.11(a)(2)(i), the plan administrator pays at least the lesser of—

(1) 90% of the flat-rate premium due for the premium payment year; or

(2) 100% of the flat-rate premium that would be due for the premium payment year if the number of participants for that year were the lesser of—

(i) The number of participants for whom premiums were required to be paid for the plan year preceding the premium payment year; or

(ii) In the case of a premium payment year beginning after 1998, the number of participants reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(h) *Reported participant count.* For purposes of paragraphs (f) and (g)(2)(ii) of this section, the number of participants reported for the plan year preceding the premium payment year is the number of participants last reported under this part to the PBGC (for the plan year preceding the premium payment year) by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i).

Issued in Washington, DC, this 21st day of April, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99-10451 Filed 4-26-99; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 72 and 75

RIN 1219-AA74

Diesel Particulate Matter Exposure of Underground Coal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period and close of record.

SUMMARY: We are extending the period for public comment on the Agency's proposed rule addressing diesel particulate matter exposure of underground coal miners. This proposed rule was published in the **Federal Register** on April 9, 1998.

DATES: We must receive your comments by July 26, 1999.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards,