

**Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]**

■ 2. Amend §655.601(a), to read as follows:

**§ 655.601 Purpose.**

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(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, including Revision No.1, FHWA, dated November 2004. This publication is incorporated by reference in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51 and is on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). It is available for inspection and copying at the Federal Highway Administration, 400 Seventh Street, SW., Room 3408, Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at: <http://mutcd.fhwa.dot.gov>.

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 31**

[TD 9162]

RIN 1545-BB66

**Federal Unemployment Tax Deposits—De Minimis Threshold**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the deposit of Federal Unemployment Tax Act (FUTA) taxes. The regulations change the accumulated amount of tax liability above which taxpayers must begin depositing Federal unemployment taxes. The regulations affect employers that have an accumulated FUTA tax liability of \$500 or less.

**DATES:** *Effective Date:* These regulations are effective December 1, 2004.

*Applicability Date:* For dates of applicability, see § 31.6302(c)-3(a)(2) and (3).

**FOR FURTHER INFORMATION CONTACT:** Heather L. Dostaler, (202) 622-4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6302 relating to mode or time of collection. The current rules relating to the deposit of FUTA taxes generally require employers to deposit taxes on a quarterly basis. An exception provides that an employer is not required to make a deposit until accumulated FUTA tax liability exceeds \$100.

A notice of proposed rulemaking (REG-144908-02) providing an additional exception to the FUTA tax deposit requirements was published in the **Federal Register** (68 FR 42329) on July 17, 2003. Under the proposed exception, an employer would not be required to deposit FUTA taxes if the employer's liability for other employment taxes (FICA taxes and withheld income taxes) was below the threshold at which deposits were required for those other taxes.

Three written comments were received in response to the notice of proposed rulemaking, but there was no request for a public hearing and a public hearing was not held. All comments were considered and are available for public inspection upon request. After consideration of the written comments, the proposed regulations under section 6302 are adopted as revised by this Treasury decision. The public comments and the revisions are discussed below.

**Summary of Comments**

Two commentators expressed concern that the creation of an additional exception linked to the deposit rules for other employment taxes will create complexity and that a single exception based on FUTA tax liability is sufficient. One commentator expressed concern regarding the low threshold amounts under both exceptions, and also expressed concern that the proposed exception could be misinterpreted by those accustomed to referring only to the amount of accumulated FUTA taxes.

One commentator suggested that the regulations should exempt household employers who file Schedule H, "Household Employment Taxes," with Form 1040. This comment is outside the scope of these regulations, which are limited to the deposit rules issued under section 6302. Household employment taxes reported on Schedule H are paid with the employer's income taxes.

**Explanation of Provisions**

After considering the public comments, the IRS and Treasury Department agree that a single exception based on a higher FUTA tax liability threshold is preferable to the exception in the proposed regulations. Accordingly, the final regulations do not include an exception linked to the deposit rules for other employment taxes. Instead, they increase the FUTA tax liability threshold from \$100 to \$500. Thus, an employer will not be required to make a deposit of FUTA taxes until FUTA tax liability exceeds \$500. This change is a simple and straightforward step to reduce the burden on small businesses.

**Special Analyses**

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

**Drafting Information**

The principal author of these regulations is Heather L. Dostaler of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 31 is amended as follows:

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

■ **Paragraph 1.** The authority citation for part 31 continues to read, in part, as follows:

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

■ **Par. 2.** In § 31.6302(c)–3, paragraphs (a)(2) and (a)(3) are revised to read as follows:

**§ 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.**

(a) \* \* \*

(2) *Special rule where accumulated amount does not exceed \$500.* The provisions of paragraph (a)(1) of this section shall not apply with respect to any period described therein if the amount of the tax imposed by section 3301 for such period (as computed under section 6157) plus amounts not deposited for prior periods does not exceed \$500 (\$100 in the case of periods ending on or before December 31, 2004). Thus, an employer shall not be required to make a deposit for a period unless his tax for such period plus tax not deposited for prior periods exceeds \$500.

(3) *Requirement for deposit in lieu of payment with return.* If the amount of tax reportable on a return on Form 940 exceeds by more than \$500 (\$100 in the case of calendar years before 2005) the sum of the amounts deposited by the employer pursuant to paragraph (a)(1) of this section for such calendar year, the employer shall, on or before the last day of the first calendar month following the calendar year for which the return is required to be filed, deposit the balance of the tax due with an authorized financial institution.

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**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: November 23, 2004.

**Gregory Jenner,**  
*Acting Assistant Secretary of the Treasury.*  
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**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4011 and 4022**

**Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Appendix D to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a

plan participant in a single-employer pension plan that terminates in 2005. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2005 maximum guaranteed benefit amounts to Appendix B. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2005.

**EFFECTIVE DATE:** January 1, 2005.

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

**SUPPLEMENTARY INFORMATION:** Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to “\$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [\$13,200].” This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Appendix D to part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to Appendix D to Part 4022

to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, \$66,900 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2005. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: \$750 multiplied by \$66,900/\$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2005 is \$3,801.14 per month in the form of a life annuity beginning at age 65. This amendment updates Appendix D to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2005. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of \$3,801.14 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2005 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2005 maximum guaranteeable benefit amounts for the information of the public.

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

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

**List of Subjects**

*29 CFR Part 4011*

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