

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

**Amendment to CBP Regulations**

■ For the reasons set forth above, part 12 of the CBP Regulations (19 CFR part 12), is amended as set forth below:

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g are revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

**§ 12.104 [Amended]**

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for El Salvador by removing the reference to “T.D. 00–16” and adding in its place “CBP Dec. 05–10” in the column headed “Decision No.”.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4000 and 4010**

**RIN 1212–AB01**

**Electronic Filing—Annual Financial and Actuarial Information**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The PBGC is amending its regulation on Annual Financial and Actuarial Information Reporting to require: Electronic filing in a standardized format of certain identifying, financial, and actuarial information and the filing of additional items of supporting information that are readily available to the filer, including a demonstration by a filer for the previous year that a filing is not

required for the current year. The final rule will strengthen the defined benefit system and enhance the PBGC’s ability to carry out its mission effectively and efficiently.

**DATES:** *Effective Date:* April 8, 2005. For a discussion of applicability of the amendments, see the Applicability section in **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:**

James J. Armbruster, Acting Director, Legislative & Regulatory Department, or James L. Beller, Attorney, Legislative & Regulatory Department, PBGC, 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:** On December 28, 2004 (at 69 FR 77679), the PBGC published a proposed rule modifying 29 CFR part 4010 of the PBGC’s regulations (Annual Financial and Actuarial Information Reporting). (The PBGC published a correction on January 12, 2005 (at 70 FR 2080)). The PBGC received seven comment letters on the proposed rule (which are addressed below) and is issuing the final regulation with three modifications: (1) The proposed requirement to provide identifying information on exempt entities is eliminated; (2) for the first year this rule is in effect, filers may submit their reports by providing the information in an electronic format specified on the PBGC’s Web site, rather than exclusively through the PBGC’s Web-based software application, and (3) for that first year, companies may continue to use the optional assumptions method to determine whether filing is required. There are other minor modifications, as noted below.

This rule is part of the Pension Benefit Guaranty Corporation’s (PBGC’s) ongoing effort to streamline regulation and to improve administration of the pension insurance program, with a focus on making pension-related data more accurate, complete, timely, and—in particular—transparent. It is also part of the PBGC’s ongoing implementation of the Government Paperwork Elimination Act and is consistent with the Office of Management and Budget’s directive to remove regulatory impediments to electronic transactions. The rule builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). To enable the PBGC to anticipate and, when

possible, minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant funding problems. Specifically, reporting is required by a controlled group if: (1) The aggregate unfunded vested benefits of all plans maintained by members of the controlled group exceed \$50 million (disregarding plans with no unfunded vested benefits); (2) the conditions specified in section 302(f) of ERISA and section 412(n) of the Internal Revenue Code for imposing a lien for missed contributions exceeding \$1 million have been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service has granted minimum funding waivers in excess of \$1 million to any plan maintained by any member of the controlled group, and any portion of the waiver(s) is still outstanding.

Pursuant to section 4010 of ERISA, the PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010 but does not currently require a standardized format. The PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information enables the PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information, the section 4010 filing plays a vital role in the PBGC’s ability to protect participant and premium-payer interests.

As modified, the final rule: (1) Requires electronic filing of section 4010 information in a standardized format; (2) requires the submission of certain additional information the PBGC needs to carry out its role of protecting participant and premium-payer interests; (3) modifies the rules for determining whether aggregate unfunded vested benefits exceed \$50 million (the \$50 million section 4010 gateway test) for reporting for information years ending on or after December 31, 2005; and (4) removes the requirement that a power of attorney accompany any filing made by a person other than a filer.

## Comments

The PBGC received seven comment letters: One from a nonprofit association representing a number of large employers, two from large corporations, and four from firms engaged in employee benefits consulting. Three commenters commended the PBGC for proposing to require the electronic submission of standardized section 4010 reports. One of those commenters stated that "the electronic submission of standardized § 4010 reports is likely to help plan sponsors to submit (and the PBGC to collect) timely, complete, accurate, and useable information in a cost-effective manner."

Commenters expressed three major concerns: (1) The new information requirements, in particular the requirement to provide identifying information on exempt entities, would be burdensome and unnecessary; (2) the elimination of the optional assumptions method for determining unfunded vested benefits could be unfair to some companies and would make it difficult for them to file in time; and (3) it would be difficult to adjust to the PBGC's Web-based software application and the additional filing requirements, especially in time to comply with the deadline for the first year under the new rules (April 15, 2005, for calendar year filers). There were a number of other miscellaneous comments.

### *New Information Requirements*

*Identifying information on exempt entities.* Several commenters raised concerns about the proposed requirement to provide identifying information on exempt entities (defined in § 4010.4(d)). The commenters stated that the new requirement would be onerous and not helpful to the PBGC. One commenter noted that its controlled group includes a very large number of entities (over 1,000) and that many of these have little or no assets. It noted that entities with a *de minimis* amount of assets should not be of concern to the PBGC. Two commenters suggested that the PBGC should not change the current exclusion for exempt entities. Those commenters suggested that if a change is required, the PBGC could adopt a standard similar to the SEC standard for allowing the omission of certain companies from the list of subsidiaries on Exhibit 21 of SEC Form 10-K. One of these commenters suggested that the final rule should exempt financially sound companies from this requirement. One commenter suggested that the PBGC allow filers to provide this information by an attachment. One commenter questioned the PBGC's

authority to require a filer upon written request to submit additional information about exempt entities and asked that the regulation specify the additional information about exempt entities the PBGC could request.

In light of these comments, the PBGC has decided to eliminate from the final rule the proposed requirement to provide identifying information on exempt entities. While the PBGC has determined that it is not necessary to collect this information on an annual basis for all section 4010 filers, such information is nonetheless vital to protecting the interests of the pension insurance program in certain circumstances, and the PBGC will request filers to provide such information on exempt entities when circumstances dictate. As explained in the preamble to the proposed rule (69 FR at 77681), exempt entities sometimes present a valuable source of recovery for PBGC claims (should any arise). This is because all members of the controlled group are jointly and severally liable to the PBGC. Therefore, the PBGC may be the only creditor, or one of just a few creditors, of the exempt entity. Section 4010 of ERISA and the existing regulation clearly allow the PBGC to ask for identifying and financial information from all section 4010 filers. Moreover, the PBGC could require the additional information annually from all filers. See the preamble to the final regulation that first implemented section 4010, 60 FR 66054, 66055 (Dec. 20, 1995). Therefore, the PBGC stresses that in specific cases it will exercise its authority under Title IV to request this additional information.

*Expansion of financial information on non-contributing sponsors.* One commenter said that extending the requirement to report revenue, assets and income to controlled group members who are not contributing sponsors seems to impose the administrative burden of sponsoring a defined benefit plan on entities who choose not to sponsor such plans. ERISA section 4010 specifically includes each member of a contributing sponsor's controlled group among the persons required to provide information. This requirement applies only to a controlled group member whose financial information cannot be ascertained by the PBGC because it is combined with other members' information in a consolidated financial statement. Moreover, as explained in the proposed rule (69 FR at 77681), the PBGC needs this information breakdown on all nonexempt entities included in consolidated financial statements, not only on contributing

sponsors. This information enables the PBGC to identify which controlled group members hold the assets of the consolidated group. This information breakdown is currently maintained by controlled groups that file consolidated statements, and thus providing it would not be burdensome.

*Changes in controlled group.* One commenter had concerns about the requirement to report controlled group changes because such changes are already captured through reporting under part 4043 (Reportable Events). Part 4043 does not apply when a member joins the controlled group. In addition, the reporting requirements under part 4043 provide a number of waivers that are not appropriate for section 4010 filers. This commenter also argued that it would be burdensome to report the potentially high volume of non-substantive controlled group changes. Because the PBGC is eliminating the proposed requirement to report on exempt entities, much of this burden is relieved.

*Frozen plans.* A commenter stated that the information on frozen plans would provide little benefit to the PBGC and could be obtained elsewhere. As explained in the preamble to the proposed rule, the PBGC needs this information to better analyze unfunded vested benefits liability. The information is not always available in the actuarial valuation report or the Form 5500. That commenter also asked that the PBGC clarify what it means by plan freezes. The section 4010 filing instructions on the PBGC's Web site specify the types of freezes that must be reported.

*Demonstration by previous filer of exemption.* One commenter questioned the PBGC's authority to require a filer for the previous year to demonstrate that a filing is not required for the current year. The commenter suggested that if the PBGC retains this requirement, it should eliminate the requirement to report the amount of unfunded vested benefits. The PBGC has the general authority under Title IV to promulgate regulations to carry out the purposes of the title, and, as explained in the proposed rule, the requirement clearly furthers the purpose of ERISA by ensuring that filers do not overlook their filing obligations. In response to this comment, the PBGC has modified the section 4010 filing instructions on its Web site by removing the requirement that previous filers report the amount of unfunded vested benefits in all cases. However, the instructions make clear that the PBGC will, on a case-by-case basis, require a more complete

demonstration that filing is not required.

#### *Optional Assumptions*

Several commenters asked the PBGC to reconsider the proposed change to the regulation that would prohibit filers from using optional assumptions for determining unfunded vested benefits for purposes of the \$50 million section 4010 gateway test. Commenters noted that some companies might be relying on the optional assumptions to determine that a 2004 filing is not required and eliminating this option would create the need to perform additional calculations to determine if a section 4010 filing is required, and if so, leave the filer little time to assemble the filing. Based on this, several commenters asked for a one-year delay in the effective date of the final regulation. In addition, one commenter stated that the optional assumptions method was an appropriate method and should not be eliminated.

As explained in detail in the preamble to the proposed rule (69 FR at 77681), reporting under section 4010 is warranted if the \$50 million section 4010 gateway test is reached using the rules under § 4006.4 for determining unfunded vested benefits. However, in order to give companies additional time to adjust to this change, the final rule will allow the use of the optional assumptions for one more year (*i.e.*, for filings with respect to information years ending before December 31, 2005).

#### *Web-Based Filing*

A number of commenters said that it would be difficult to adjust to the PBGC's web-based software application and the additional filing requirements, and especially difficult to adjust in time to comply with the deadline for the first year (April 15, 2005, for calendar year filers). Several commenters said that the PBGC should not require submission through the PBGC's Web-based software application but should provide an alternative of submitting the information on an electronic spreadsheet or other commonly used electronic format. Several commenters urged that the Web-based software application should allow for more than one ID/password per filing, so that certain information could be entered under one password, while other information could be entered under another password. Two commenters suggested that the Web-based software be designed to allow the company to enter the financial information, without providing access to that information to the actuary, and allow the actuary to

enter the actuarial information separately.

There are a number of reasons why the proposed rule required filing through the PBGC's Web-based software application. As stated in the preamble to the proposed rule (69 FR at 77680), filers currently provide section 4010 information in a non-standard format. This makes the information harder to use, restricts the PBGC's ability to perform electronic data analysis, and in general results in unnecessary work, inaccuracies, and delays. The PBGC has concluded that its ability to protect participant and premium-payer interests would increase and that the filing process would work more efficiently if filers provided information electronically and in a standardized format. Moreover, filing by using the PBGC's Web-based software application will have many advantages over filing by using a commonly-used electronic format. For example, the Web-based software will automatically create a database of section 4010 information and will perform validity checks to ensure the filing is internally consistent and complete before it is submitted. In addition, the Web-based software will retain the filer's previous year's filing and use this as a starting point for completing the current year's filing; in general, information will need to be reentered each year only to the extent it has changed from the prior year.

Nevertheless, in order to give filers more time to adjust to the web-based software application, for the first year (*i.e.*, for filings with respect to information years ending before December 31, 2005), filers may submit their reports in one of two manners: (1) Using the PBGC's Web-based software application, or (2) providing the information in a commonly-used electronic format as specified on the PBGC's Web site. For filings using a commonly-used electronic format, the section 4010 filing instructions on the PBGC's Web site specify the acceptable electronic file types (*e.g.*, compressed, pdf, Word, Wordperfect, or Excel) and the requirements for organizing and presenting the information. After the first year, filing will be permitted only through the PBGC's Web-based software application.

Although the Web-based software application does not provide for multiple passwords, where filings require the effort of multiple people, the PBGC expects that one person will collect the information from all sources and then enter the information via the Web-based software application. For the first year, filers may avoid the problems that might arise due to the single ID/

password feature of the Web-based software application by choosing the option of submitting their reports in an electronic format as specified on the PBGC's Web site. The PBGC is looking into the feasibility of providing multiple passwords for reporting for future information years.

One commenter noted that neither the preamble nor the proposed rule provides that the PBGC's Web site would be secure. In the materials provided on the PBGC's Web site along with the proposed rule (<http://www.pbgc.gov/laws/lawsregs/federalreg/proprule.htm>), the PBGC explained that the Web-based software application would be secure. The PBGC has ensured that the Web-based software application uses the best available information security measures.

Some commenters asked for clarification on how certain aspects of the Web-based software application will work (for example, the procedure for submitting an actuarial valuation report after the section 4010 filing due date as permitted under § 4010.8(b) or correcting a filing after submission). The PBGC has made these clarifications in the section 4010 filing instructions on the PBGC's Web site.

#### *Proposed Legislation*

Several commenters suggested that the PBGC should delay the effective date of the proposed rule so that it can be coordinated with any legislation enacted by Congress affecting pension funding and disclosure. The regulatory changes made by this final rule are needed under the current state of the law and it would be contrary to the interests of the pension insurance program to delay implementation based on the assumption that Congress will legislate in this area. In the event that Congressional action affects part 4010 of the regulations, the PBGC will make appropriate changes.

#### *Miscellaneous Comments*

One commenter asked for clarification of the date by which contributions must be made in order to be taken into account for determining unfunded vested benefits for purposes of the \$50 million section 4010 gateway test. The final rule clarifies that contributions must be paid on or before the due date for filing specified in § 4010.10(a) of this part (without regard to the alternative due date under § 4010.10(b) of this part). In addition, the final rule clarifies that contributions paid after the end of the plan year must be attributable to that plan year (*i.e.*, the plan year for which they are to be taken into account). Thus, contributions made after the end of the

plan year and used to satisfy quarterly contribution requirements for the current plan year (the plan year in which they are made) are not taken into account. In addition, the final rule clarifies that contributions must be discounted back to the end of the plan year and the methodology for doing so.

Commenters asked for guidance on a number of reporting issues, including participant counts, breakdown of benefit liabilities by participant categories, and expected retirement age. The section 4010 filing instructions on the PBGC's Web site clarify these issues.

Another commenter suggested that rather than reporting the specific actuarial assumptions used to determine benefit liabilities, filers should be permitted to simply indicate that the required assumptions were used. The section 4010 filing instructions on the PBGC's website allow this, except that filers will be required to enter the interest rate and expense load because in many situations the incorrect interest rate is used or the load is omitted.

One commenter had concerns with allowing the PBGC, through instructions on its Web site, to modify the format of the information and to require the submission of additional information relating to the specific information described in the regulation. The commenter stated that it would impose a larger burden on filers if the PBGC does not formally announce and communicate the changes publicly and that filers would need advance notification of these changes. As explained in the preamble to the proposed rule (69 FR at 77680), the rule builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances. Moreover, the rule allows the PBGC to use its Web site to specify additional information only if that information relates to information already required by the regulation. The PBGC intends to make any changes public by means of advance posting to its Web site and by other means as appropriate.

Another commenter suggested that the PBGC should provide relief for filers that are unable to file because of problems with the PBGC's Web-based software application or other PBGC systems (such as e-mail). The PBGC's general authority to provide waivers and extensions under §§ 4000.5, 4000.32, and 4010.11 and the rules under § 4000.30 (relating to the need to resend an electronic submission for technical reasons) would cover such a case.

One commenter asked the PBGC to extend the comment period from 30 days to 90 days. The PBGC is not extending the comment period. In the

preamble to the proposed rule, the PBGC explained in detail why a 30-day comment period was appropriate (69 FR at 77681).

One commenter expressed concern that the regulation provides no penalty relief for the first year's filings under the new procedures. Much of the commenter's concern has been addressed by the other modifications the PBGC has made to the proposed rule. Moreover, under its penalty policy, the PBGC can grant penalty relief for reasonable cause. The PBGC recognizes that filers may have section 4010 compliance questions, especially for the April 15, 2005, filing. The PBGC will provide information on its Web site, <http://www.pbgc.gov>, on how filers may seek guidance on section 4010 compliance questions.

#### Applicability

This rule applies to reporting for any information year ending on or after December 31, 2004, except that the optional assumptions method (as provided in § 4010.4(b)(2) of this part before amendment by this final rule) may be used for reporting for information years ending before December 31, 2005.

#### Compliance With Rulemaking and Paperwork Reduction Act Guidelines

The Office of Management and Budget has determined that this final rule is a "significant regulatory action" and has therefore reviewed the final rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. The tests for identifying filers under section 4010(b) of ERISA effectively limit the filing requirements to large companies and their controlled groups. 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.

The PBGC is submitting the information requirements contained in this final rule to the Office of Management and Budget for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. This final rule modifies paperwork collections under both part 4000 (approved under OMB control number 1212-0059; expires 10/31/06) and Part 4010 (approved under OMB control number 1212-0049; expires 2/29/08). 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.

#### List of Subjects

##### 29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### 29 CFR Part 4010

Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, the PBGC amends 29 CFR parts 4000 and 4010 as follows.

#### PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

**Authority:** 29 U.S.C. 1082(f), 1302(b)(3).

■ 2. Revise § 4000.3 to read as follows:

##### § 4000.3 What methods of filing may I use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* You must submit the information required under 29 CFR part 4010 electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

(1) On our Web site, <http://www.pbgc.gov>;

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC, 20005-4026; telephone 1-800-400-7242 (for participants), or 1-800-736-2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to the appropriate number.)

■ 3. Amend § 4000.4 by adding two sentences to the end of the section to read as follows:

##### § 4000.4 Where do I file my submission?

\* \* \* You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

■ 4. Amend § 4000.23 as follows:

■ a. Add a sentence to the end of paragraph (a); and

■ b. Add a sentence to the end of paragraph (b)(3).

The additions read as follows:

**§ 4000.23 When is my submission or issuance treated as filed or issued?**

(a) \* \* \* A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) \* \* \*

(3) \* \* \* A submission made through our Web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

■ 5. Amend § 4000.29 by adding three sentences to the end of paragraph (a) introductory text to read as follows:

**§ 4000.29 What if I use electronic delivery?**

(a) \* \* \* A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

\* \* \* \* \*

**PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING**

■ 6. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

■ 7. Revise § 4010.3 to read as follows:

**§ 4010.3 Filing requirement.**

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

■ 8. Revise paragraphs (a)(3), (b), and (c) introductory text of § 4010.4 to read as follows:

**§ 4010.4 Filers.**

(a) \* \* \*

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code, totaling in excess of \$1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* For purposes of determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section, contributions made after the end of the plan year ending within the filer's information year are taken into account for that plan year only to the extent that they are—

(i) Paid on or before the filing due date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b));

(ii) Attributable to that plan year for funding purposes under ERISA section 302(c)(1) and section 412(c)(10) of the Code; and

(iii) Discounted in accordance with § 4006.4(b)(2)(iv) if unfunded vested benefits are determined under § 4006.4(b) or in accordance with § 4006.4(c)(4) if unfunded vested benefits are determined under § 4006.4(c).

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

\* \* \* \* \*

■ 9. Revise paragraph (c)(2) of § 4010.5 to read as follows:

**§ 4010.5 Information year.**

\* \* \* \* \*

(c) \* \* \*

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending

September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

■ 10. Revise paragraphs (a) and (b) of § 4010.6 to read as follows:

**§ 4010.6 Information to be filed.**

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on the PBGC's website.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's website, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

\* \* \* \* \*

■ 11. Revise § 4010.7 to read as follows:

**§ 4010.7 Identifying information.**

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) *Current members.* For an entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by

the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) *Current plans.* For a plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan had not been maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year; and

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (e.g., service is frozen but pay is not).

(2) *Former plans.* For a plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan, and the identifying information required by paragraph (b)(1) as of the date immediately preceding that date.

■ 12. Amend § 4010.8 by revising paragraphs (a) and (b) as follows:

**§ 4010.8 Plan actuarial information.**

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required

to provide, in accordance with the instructions on the PBGC's website, the following actuarial information—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments;

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets;

(3) The value of the plan's benefit liabilities, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(4) A description of the actuarial assumptions for interest (i.e., the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as used to determine the benefit liabilities in paragraph (a)(3) of this section; and

(5) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) Each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of ERISA or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of ERISA or section 412(b)(3)(A) of the Code),

(ii) The itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) The minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) The actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change),

(v) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors,

(vi) The current liability, vested and nonvested, calculated pursuant to section 412 of the Code, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants,

(vii) The expected increase in current liability due to benefits accruing during the plan year, and

(viii) The expected plan disbursements for the plan year; and

(6) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059-1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(5) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(6) of this section) with the PBGC by that alternative due date.

\* \* \* \* \*

■ 13. Revise paragraphs (a) introductory text and (b)(2) of § 4010.9 to read as follows:

**§ 4010.9 Financial information.**

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following financial information for each controlled group member (other than an exempt entity)—

\* \* \* \* \*

(b) \* \* \*

(2) For each controlled group member included in the consolidated financial statements (other than an exempt entity), the member's revenues and operating income for the information year, and net assets at the end of the information year.

\* \* \* \* \*

Issued in Washington, DC, this 4th day of March, 2005.

**Elaine L. Chao,**

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

**Philip R. Hertz,**

*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

[FR Doc. 05-4623 Filed 3-8-05; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CCGD11-04-010]

RIN 1625-AA11

#### Regulated Navigation Area; Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, Humboldt Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is designating the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as a Regulated Navigation Area (RNA) for certain commercial vessels transporting oil or hazardous material as cargo. This action is necessary to reduce significant hazards to subject vessels, the port and the public that are present during periods of poor weather conditions. The RNA codifies existing Captain of the Port San Francisco Bay (COTP) policies for vessels transporting oil or certain dangerous cargoes in bulk within Humboldt Bay.

**DATES:** This rule is effective from April 8, 2005 to October 11, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CCGD11-04-010] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-2770.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the maritime public and the environment from the hazards associated with these cargoes and the extremely dangerous marine conditions at the Humboldt Bay Bar. A separate NPRM to make permanent the regulations in this TFR will be published to allow public comment prior to the issuance of a final rule to make these regulations permanent.

### Background and Purpose

Because Humboldt Bay has a breaking bar, a narrow entrance channel, and no general anchorages within the bay, transits of this area present significant hazards to vessels carrying oil or hazardous material as cargo. The potential hazards to the subject vessels and the consequences of casualties involving commercial vessels carrying oil or hazardous material as cargo warrant special procedures to reduce the potential for a collision or grounding and the subsequent release of a cargo covered by this regulation.

Prior to the issuance of this TFR, the COTP issued several advisories addressing safe entry procedures for vessels transporting cargoes of oil or other hazardous material in the Humboldt Bay area. The most recent was a COTP Advisory put into effect in June of 1998 (COTP Advisory 01-98). This advisory included policies for when the bar would be closed to specified vessel traffic, notice requirements, vessel escort policies, and addressed parameters and procedures for waiver requests. In August of 2004, representatives from the Coast Guard Marine Safety Office San Francisco Bay met with Humboldt Bay stakeholders to review COTP Advisory 01-98. In attendance at this meeting were representatives from the California State Department of Fish and Game's Office of Oil Spill Prevention and Response, Humboldt Bay Coast Guard units, and local oil tank vessel operators. The COTP determined that although the policies contained within the COTP Advisory were appropriate, the policies and procedures should be codified into Federal Regulation to clearly establish the Coast Guard's authority to enforce them. In addition, it was decided that because Coast Guard Group Humboldt Bay is located near the Humboldt Bay

Bar, the Group Commander would be better equipped to make timely judgments on bar conditions and to enforce this regulated navigation area. Therefore, the authority to enforce this regulated navigation is being delegated to the Commanding Officer of Group Humboldt Bay.

In this particular rulemaking, the Coast Guard is designating an area around the Humboldt Bay Bar as a RNA for the following purposes: (1) To establish the Coast Guard's authority to prohibit vessels carrying oil or hazardous material as cargo from crossing the bar during unsafe conditions, (2) to establish waiver, notice, and vessel escort policies, and (3) to delegate the authority for enforcing these regulations to the Humboldt Bay Group Commander.

### Discussion of Rule

This rule designates the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel as an RNA for the purpose of regulating vessels transporting cargoes of oil or hazardous material. The potential hazards associated with these products are serious enough to justify special procedures to reduce the possibility of a collision or grounding during periods of poor weather, which could lead to a release of the materials covered by this regulation. The regulation helps ensure the safety of mariners, the public, the port, and the environment by establishing requirements and procedures regarding: (1) Notice of intent to cross the bar, (2) when the bar would be closed to certain vessels due to weather conditions, (3) waivers, and (4) vessel escorts.

If the owner, master, agent, or person in charge of a vessel to which the regulation applies wants to obtain a waiver to cross the bar when it is closed, a waiver can be requested within 4 hours of crossing the bar and will be considered for approval by the Group Commander, or his designated representative, on a case-by-case basis. As a general rule waivers will only be granted when the following conditions exist: (1) Proper permission to cross has been received, (2) sea conditions at the bar are less than 6 feet, (3) winds at the bar are less than 30 knots, (4) the transit will take place during daylight hours, (5) the vessel has only a single tow or no tow, and (6) the visibility at the bar is greater than 1,000 yards.

Deviations from the procedures and requirements of this rule are prohibited unless specifically authorized by the Group Commander or his designated representative. Vessels or persons violating this section may be subject to