

5. Although there have been many questions concerning this issue, neither the Service nor the Department has yet received formal applications for individual exemptions or applications for a class exemption for transactions of this type. However, because of the apparent prevalence of this type of transaction and the possible consequences to a large number of individuals establishing IRAs and Keogh Plans, the Service and the Department propose to deal with these transactions as a class on their own motion pursuant to Rev. Proc. 75-26 and ERISA Procedure 75-1. The Service and the Department believe that treating the transactions as a class is likely to be administratively feasible and protective of the interests and rights of IRA and Keogh Plan participants and their beneficiaries.

6. In addressing these transactions as a class, the Service and Department must insure that adequate protections for IRA and Keogh Plan participants and their beneficiaries are common features in all transactions subject to the exemption and that the transactions do not conflict with the basic purpose of such plans which is to provide retirement savings for participants and their beneficiaries. As a result, the proposed exemption contains specific conditions to protect the interests of the participants, their spouses, and beneficiaries. However, in order to insure that, consistent with their tax exempt purposes, IRAs and Keogh Plans provide a maximum deferred return at retirement, the IRA or Keogh Plan must be established solely to benefit the person receiving the property, cash, or other consideration, his or her spouse and their beneficiaries. The fair market value of the property, which may be measured by its cost to the financial institution, or the cash received must not exceed \$10 for a deposit of less than \$5,000 and \$20 for deposits of \$5,000 or more. The conditions of the proposed exemption do not specifically limit the form that the premiums may take.

7. The exemption will not be available to exempt individuals establishing Keogh Plans that are subject to Title I of the Act, nor will the exemption be available to exempt the receipt of cash, property or other consideration by third persons other than those described in the exemption.

#### Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and financial

institutions sponsoring IRAs and Keogh Plans could conceivably be considered interested persons, the only practical form of notice is publication in the Federal Register.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the exemption affect the requirement of section 408(a) of the Code that the IRA must operate for the exclusive benefit of the individual for whose benefit the IRA is maintained and his or her beneficiaries or the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before any exemption may be granted under section 4975(c)(2) of the Code, the Service and the Department must find that the exemption is administratively feasible, in the interest of the individual for whose benefit the IRA and Keogh Plan is maintained and protective of the rights of that individual and his or her beneficiaries;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

#### Written Comments and Hearing Request

All persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

#### Proposed Exemption

The Service and the Department are considering granting the exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective January 1, 1975, the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans, to an individual establishing or contributing to an IRA or Keogh Plan or to members of his or her family as defined by section 4975(e)(6) of the Code, provided that:

(a) The IRA or Keogh Plan in connection with which cash, property or other consideration is given, is established solely to benefit the participant, his or her spouse and their beneficiaries; and

(b) The fair market value to the financial institutions of the property or other consideration or the cash received, is not more than \$10 for deposits to the IRA or Keogh Plan or less than \$5,000 and \$20 for deposits to the IRA or Keogh Plan of \$5,000 or more.

Signed at Washington, D.C., this 3d day of January 1983.

S. Allen Winborne,

*Assistant Commissioner for Employee Plans and Exempt Organizations, Internal Revenue Service.*

Jeffrey N. Clayton,

*Administrator, Pension and Welfare Benefit Programs, United States Department of Labor.*

[FR Doc. 83-2674 Filed 1-31-83; 8:45 am]

BILLING CODE 4830-01-M

#### VETERANS ADMINISTRATION

##### Advisory Committee on Health-Related Effects of Herbicides; Availability of Annual Report

Pursuant to the provisions of section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) and OMB Circular A-63 of March 27, 1974, notice is hereby given that the Annual Report of the Veterans Administration Advisory Committee on Health-Related Effects of Herbicides for calendar year 1982 has been issued.



The report summarizes activities of the Committee on matters related to possible health effects of Agent Orange and other herbicides used during the Vietnam conflict on U.S. military personnel. It is available for public inspection at two locations;

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC. 20540  
and

Mr. Donald J. Rosenblum, Agent Orange Projects Office (10A7), Room 848, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC. 20420

Dated: January 24, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,

*Committee Management Officer.*

[FR Doc. 83-2735 Filed 1-31-83; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### 1

#### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10 a.m., Friday, February 4, 1983.

**LOCATION:** Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

**STATUS:** Open to the Public:

##### 1. Phthalates: Status

The staff will brief the Commission on the status of the D: 12-ethylhexyl phthalate in consumer products project.

##### 2. Pharmacy/Medical Community Awareness: Status

The staff will brief the Commission on this project which is to make pharmacists and physicians aware of the PPPA and of their obligations and options.

##### 3. Dual Purpose Closures: Status

The staff will brief the Commission on the status of the dual purpose packaging project.

##### 4. Space Heaters: Exemption Applications (1-23)

The staff will brief the Commission on Petitions SW 82-1 through SH 82-23 from state/local jurisdictions which request exemption from the preemption effect of the safety standard for unvented gas-fired space heaters.

#### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-142-83 Filed 1-28-83; 3:44]

**BILLING CODE** 6355-01-M

### 2

#### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10 a.m., Thursday, February 3, 1983.

**LOCATION:** Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

**STATUS:** Open to the Public:

##### Toy Chests

The Commission will meet with representatives of the toy chest industry to discuss a draft proposed rule which addresses the risk of strangulation to children from falling toy chest lids.

#### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-143-82 Filed 1-28-83; 3:44 pm]

**BILLING CODE** 6355-01-M

### 3

#### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 2 p.m., Monday, January 31, 1983.

**LOCATION:** Eighth Floor Conference Room, 1111 18th Street, NW., Washington, D.C.

**STATUS:** Closed to the public:

##### Statutory Review

The Commissioners and staff will discuss matters related to statutory review.

The Commission voted that the public interest required holding this meeting without the normal notice.

#### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-144-83 Filed 1-28-83; 3:44 pm]

**BILLING CODE** 6355-01-M

### 4

#### FEDERAL COMMUNICATIONS COMMISSION

**Open Commission Meeting, Thursday, January 27, 1983**

January 19, 1983.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 27, 1983, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

##### Agenda, Item No., and Subject

The Commission will be briefed about the January 27, 1983, Meeting of the Long-Range Planning Committee of the National Industry Advisory Committee. (No item will be considered in connection with this briefing.)

**General—1—Title:** Notice of Proposed Rule Making to provide additional channels for the Offshore Radio Telecommunications

Service (ORTS). **Summary:** The Commission will consider the merits of a proposal to reallocate UHF-TV Channels 15 (476-482 MHz) and UHF-TV Channel 16 (482-488 MHz) for the Offshore Radio Telecommunication Service. This is to provide new channels for radio communication in an area not presently served by ORTS and to expand the number of radio communication channels in the existing area. Due to the continuing growth of offshore oil and gas operations, these new needs have arisen.

**Private Radio—1—Title:** Use of the digital radioteleprinter code "AMTOR" by amateur radio stations. **Summary:** The Commission will consider whether or not to adopt rules to allow use of the digital radioteleprinter code "AMTOR" by amateur radio stations.

**Private Radio—2—Title:** Amendment of the Amateur Radio Service Rules, Part 97, to make additional frequencies available to the Radio Amateur Civil Emergency Service (RACES) during declared national emergencies. **Summary:** The Commission will consider whether to adopt a Notice of Proposed Rule Making proposing to amend Part 97 of the Rules to make additional frequencies available to the Radio Amateur Civil Emergency Service during declared national emergencies.

**Common Carrier—1—Title:** Application of David R. Williams d.b.a. Industrial Communications for review of denial of reconsideration of previous action returning DPLMRS application as defective under Section 22.20. **Summary:** The Commission will consider the Application for Review filed by David R. Williams d.b.a. Industrial Communications (Industrial) challenging the Common Carrier Bureau's return of Industrial's mutually exclusive application as defective under Section 22.20 of the Commission's Rules.

**Common Carrier—2—Title:** Third Report and Order and Further Notice of Proposed Rulemaking in Docket No. 20870; Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service. **Summary:** The Commission will consider the adoption of final policies and procedures concerning objective need showings for applications requesting multiple new or additional two-way channels in the DPLMRS. Policies and procedures concerning objective need showings for applications requesting an additional one-way frequency for one-way signaling stations in the DPLMRS are being proposed.

**Common Carrier—3—Title:** Memorandum Opinion and Order in Docket No. 21499 relating to the offer of 48 kHz and 240 kHz analog channels of communication to the public by the American Telephone and Telegraph Company. **Summary:** The



Commission will consider whether AT&T's tariff restrictions limiting the availability of these high capacity analog channels are reasonable.

**Common Carrier—4—Title:** AT&T and the BSOs (Resale and Sharing of Intrastate WATS Used for Completion and Interstate Communications). **Summary:** Satellite Business Systems (SBS) has filed a petition for a declaratory ruling by the Commission that the Bell System Operating Companies (BSOs) should not refuse WATS connections within a State to carriers which intend to resell the service to endusers as a link to complete interstate communications—despite any resale restrictions in the BSOs' intrastate WATS tariffs. Other non-Bell interstate carriers, including Western Union, MCI, ARINC, and several certificated interstate resale carriers, have filed comments in support of SBS's petition; ARINC and the resellers advocate that the ruling be framed so as to encompass restrictions on shared use—as well as resale—of WATS for intrastate distribution of interstate communications, whether by other common carriers or by private entities. AT&T (on behalf of the BSOs), NARUC, and several State utilities commissions have filed in opposition. AT&T and NARUC urge the Commission to permit the BSOs to continue to enforce resale and sharing restrictions on intrastate WATS used in interstate communications, until such time as the BSOs shall have revised their intrastate WATS rates to be more usage-sensitive.

**Common Carrier—5—Title:** Comsat application File No. 1-P-C-83-008 requesting authority to provide basic transmission capacity directly to non-carriers; Application for Review filed by RCA of a Bureau grant of special temporary authority to Comsat in application File No. 1-P-C-83-008; Motions for Stay filed by RCA and WUI of a Bureau grant of special temporary authority in application File No. 1-P-C-83-008; and Application for Review filed by RCA of a Bureau order denying its petition to reject or suspend and investigate revisions by Comsat to its Tariff FCC No. 101. **Summary:** The Commission will consider the Comsat application, three filings by RCA relating to the Bureau's implementation of the Commission's Authorized User decision and one filing by WUI.

**Audio—1—Title:** In re application of Ettlinger Broadcasting Corporation, File No. BPH-10,075, for a new FM station in Westmoreland, California. **Summary:** The Commission considers the above application and a petition by the applicant seeking reconsideration of the Commission's action dismissing the application.

**Audio—2—Title:** Petitions filed by Loyola University seeking review of actions of the Chief Broadcast Facilities Division denying its petitions to specify issues against proposed new facilities on U.S. Class I-A clear channels. **Summary:** The Commission considers the above matters.

**Audio—3—Title:** In re application of Davison Communications Corporation (File No.

BPH-800428AH) for a construction permit for a new FM station in Sturgeon Bay, Wisconsin. **Summary:** The Commission considers an application for review of its action, by delegated authority, granting the construction permit, filed by Door County Broadcasting Co., licensee of Stations WDOR (AM & FM), Sturgeon Bay, Wisconsin.

**Policy—1—Title:** In the Matter of Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities. **Summary:** The FCC will consider whether to adopt a Notice of Proposed Rule Making aimed at comprehensively reviewing the ownership attribution rules and revising them upward to more realistic levels.

**Enforcement—1—Title:** Petition requesting adoption of an overall renewal/revocation approach to implementation of 47 U.S.C. 312(a)(7) (reasonable access). **Summary:** The Commission will consider petition requesting that it change its present case-by-case implementation of statutory provision requiring reasonable access for Federal candidates. Petitioner seeks an overall review at renewal or upon institution of revocation proceedings.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254-7674. William J. Tricarico, Secretary, Federal Communications Commission.

[S-137-83 Filed 1-28-83; 10:54 am]

BILLING CODE 6712-01-M

## 5

### FEDERAL HOME LOAN BANK BOARD

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 48 FR 3695, January 26, 1983.

**PLACE:** Board room, sixth floor, 1700 G Street NW., Washington, D.C.

**STATUS:** Open meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Lockwood (202-377-6679).

**CHANGES IN THE MEETING:** The following items have been added to the open portion of the Bank Board meeting scheduled Wednesday, February 2, 1983, at 10:30 a.m.:

Data Processing Activities of Federal Associations; Home Banking Services Net Worth Certificates; Regulatory Net Worth

[No. 6, January 28, 1983]

[S-141-83 Filed 1-28-83; 3:18 pm]

BILLING CODE 6720-01-M

## 6

### FEDERAL MARITIME COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 48 FR 3906, January 27, 1983.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 9 a.m., February 2, 1983.

**CHANGES IN THE MEETING:** The time of the meeting is changed from 9:00 a.m. on February 2, 1983 to 2:00 p.m. on February 2, 1983. Addition of the following item to the open session:

4. Sea-Land Service, Inc.—Application for special permission to establish new or initial intermodal rates on less than statutory notice.

Addition of the following item to the closed session:

2. Docket No. 82-47; Agreement No. 10266—Agreement Between Intercontinental Transport, B.V. and Compagnie Generale Maritime—Consideration of the record.

[S-136-83 Filed 1-28-83; 11:15 am]

BILLING CODE 6730-01-M

## 7

### FEDERAL RESERVE SYSTEM

(Board of Governors)

**TIME AND DATE:** 10 a.m., Monday, February 7, 1983.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, D.C. 20551

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

James McAfee,

Associate Secretary of the Board.

[S-146-83 Filed 1-28-83; 3:44 pm]

BILLING CODE 6210-01-M

## 8

### INTERNATIONAL TRADE COMMISSION

[USITC SE-83-06A]

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Telecopied to FR on January 25, 1983 at 4:20 p.m.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 2:30 p.m., Tuesday, February 8, 1983.

**CHANGES IN THE MEETING:** Notice of change in time for the meeting:



By unanimous consent, the United States International Trade Commission voted, on January 27, 1983, to reschedule the time for the meeting of Tuesday, February 8, 1983, from 2:30 p.m., to 11:30 a.m. There are no other changes to the agenda.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary (202) 523-0161.

[S-136-83 Filed 1-28-83; 9:28 am]

**BILLING CODE** 7020-02-M

9

#### INTERNATIONAL TRADE COMMISSION

[USITC ERB-83-01A]

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 48 FR 3695.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 11 a.m., Thursday, February 10, 1983.

**CHANGES IN THE MEETING:** Notice of change of date and time of the meeting:

By memorandum dated January 28, 1983, Commissioners Stern and Haggart voted to reschedule the ERB meeting previously announced for February 10, 1983, at 11:00 a.m. to February 7, 1983, at 12:30 p.m. There are no other changes to the notice.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary (202) 523-0161.

[S-140-83 Filed 1-28-83; 3:17 pm]

**BILLING CODE** 7020-02-M

10

#### NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-4]

**TIME AND DATE:** 9 a.m., Tuesday, February 8, 1983.

**PLACE:** NTSB Board Room, 800

Independence Ave., S.W., Washington, D.C. 20594.

**STATUS:** The first four items will be open to the public; the last two will be closed under Exemption 10 of the Government in the Sunshine Act.

#### MATTERS TO BE CONSIDERED:

1. *Letter to the Federal Aviation Administration* regarding the Safety Board's reconsideration of the Pacific Southwest Airlines B-727 accident in San Diego, California, on September 25, 1978, and Safety Board policy regarding reconsiderations of probable cause.

2. *Letter to Air Line Pilots Association* regarding the reopening of the investigation of the Pacific Southwest Airlines B-727 accident in San Diego, California, on September 25, 1978.

3. *Marine Accident Report:* Capsizing and Sinking of the U.S. Mobile Offshore Drilling Unit *Ocean Ranger* Off the East Coast of Canada, 188 Nautical Miles East of St. John's, Newfoundland, February 15, 1982, and Recommendations to the U.S. Coast Guard, Ocean Drilling and Exploration Company, Mobil Oil of Canada, Ltd., American Bureau of Shipping, and International Association of Drilling Contractors.

4. *Railroad Accident Report:* Derailment of Amtrak Train No. 5 (The San Francisco Zephyr) on the Burlington Northern Railroad, Emerson, Iowa, June 15, 1982, and Recommendations to Burlington Northern Railroad, National Railroad Passenger Corporation (Amtrak), and Association of American Railroads.

5. *Opinion and Order:* Administrator v. Pollauf, Dkt. SE-5497; disposition of respondent's appeal.

6. *Opinion and Order on Interlocking Appeal:* Administrator v. Aerospace

Maintenance Co., Dkt. SE-4928; disposition of respondent's interlocking appeal.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming (202) 382-6525.

January 28, 1983.

[S-145-83 Filed 1-28-83; 3:44 pm]

**BILLING CODE** 4910-58-M

11

#### SECURITIES AND EXCHANGE COMMISSION "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 2889,

January 21, 1983.

**STATUS:** Closed meeting.

**PLACE:** 450 5th Street, NW., Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, January 18, 1983.

**CHANGES IN THE MEETING:** Additional items. The following additional items were considered at a closed meeting scheduled for Tuesday, January 25, 1983, at 10:00 a.m.:

Regulatory matters bearing enforcement implications.

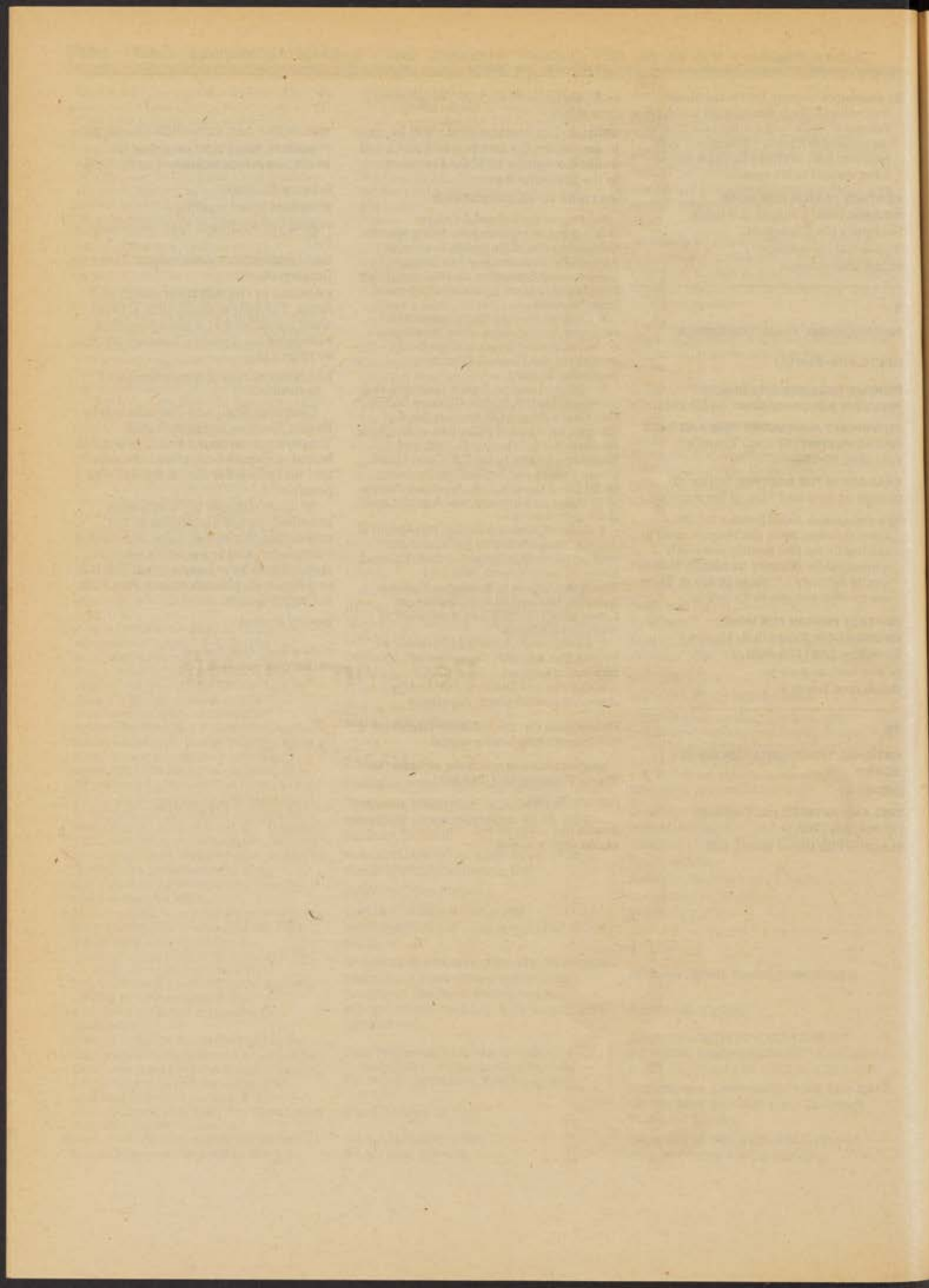
Chairman Shad and Commissioners Evans, Thomas, Longstreth and Treadway determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bob Zutz at (202) 272-2091.

January 27, 1983.

[S-139-82 Filed 1-28-83; 11:15 am]

**BILLING CODE** 8010-01-M





# Federal Register

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Tuesday  
February 1, 1983

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## Part II

### **Pension Benefit Guaranty Corporation**

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**Supplemental Guarantee Program;  
Proposed Rule**



# PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Parts 2690 through 2695

### Supplemental Guarantee Program

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation if adopted would establish a supplemental program to guarantee benefits under multiemployer plans that would otherwise be guaranteed but for the dollar or percentage limitations on guaranteed benefits in the Employee Retirement Income Security Act of 1974, as amended. That law requires the Pension Benefit Guaranty Corporation to establish a supplemental guarantee program, coverage under which must be available by January 1, 1983. Participation by plans in this supplemental program is optional. The regulation is needed to establish a supplemental guarantee program, as required by law, in order to afford participants in multiemployer plans and their beneficiaries the fullest feasible benefit guarantee. The effect of this regulation would be to provide multiemployer plans with the opportunity to obtain a greater benefit guarantee for participants.

**DATE:** Comments must be received on or before April 4, 1983.

**ADDRESSES:** Comments should be addressed to the Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, Suite 7300, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** J. Ronald Goldstein, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006; 202-254-4862. [This is not a toll-free number].

### SUPPLEMENTARY INFORMATION:

#### The Statute

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, 94 Stat. 1208 ("Multiemployer Act"), became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"). (As used herein, "ERISA" means the Act as amended, unless the context requires otherwise.) The Multiemployer Act revised the rules under which the Pension Benefit Guaranty Corporation

(the "PBGC") guarantees benefits under a multiemployer plan.

Under section 4022A(a) of ERISA, the PBGC guarantees the payment of certain nonforfeitable benefits ("basic benefits" or "guaranteed benefits") under a multiemployer plan that is insolvent. A plan is insolvent if it is unable to pay benefits when due for the plan year. A plan terminated by a mass withdrawal is not insolvent until it has first been amended to eliminate all benefits that are not eligible for the PBGC's guarantee under section 4022A(b).

Under section 4022A(b), only nonforfeitable benefits or benefit increases that have been in effect for 60 months or more are eligible for PBGC's guarantee ("guaranteeable benefits"). Section 4022A(c) limits the maximum monthly guaranteed benefit to the product of (a) 100 percent of the first \$5 of a participant's benefit accrual rate and 75 percent of the next \$15 of a participant's benefit accrual rate, and (b) the participant's number of years of credited service. A participant's benefit accrual rate is computed by dividing a participant's monthly guaranteeable benefit by the participant's number of years of credited service under the plan for benefit accrual purposes. In this fraction, the guaranteeable benefit may not exceed the plan benefit payable at normal retirement age as a life annuity and is determined without regard to past service benefit reductions permitted to be made on account of the cessation of contributions by the participant's employer. The 75 percent guarantee is reduced to 65 percent under plans that did not satisfy pre-ERISA funding requirements.<sup>1</sup>

These rules for determining guaranteed benefits are applied without regard to past service benefit reductions permitted to be made on account of the cessation of contributions by an employer (section 4022A(c)(3)). Under section 4022A(d), if a past-service benefit is reduced because of the cessation of contributions by an employer, the guaranteed benefit is the lesser of the benefit determined under section 4022A(c) or the benefit determined under the plan's past service disregard rule. Section 4022A(h) contains a special rule for participants or beneficiaries under a multiemployer plan who, on July 29, 1980, were in pay status or were within 36 months of the plan's normal retirement age and had a nonforfeitable right to a pension. The PBGC will guarantee those individuals'

<sup>1</sup>The insurance limits in section 4022(b) of the Act (other than the limits in section 4022(b)(6), relating to benefit accruals under a plan that ceases to meet the requirements of Internal Revenue Code section 401(a)) apply only to single-employer plans.

nonforfeitable accrued benefits as of that date under the single-employer rules in section 4022 of the Act, except for plan years following a plan year in which substantially all employers withdrew pursuant to an agreement to withdraw or the plan terminates by mass withdrawal under section 4041A(a)(2).

Section 4022A(g)(2) requires the PBGC to establish a supplemental program to guarantee benefits that would otherwise be guaranteed but for the limitations in section 4022A(c) ("supplemental benefits"). The supplemental benefits of a participant that are guaranteed by the PBGC under section 4022A(g)(2) are nonbasic benefits under Title IV.

The PBGC is required under section 4022A(g)(2) to establish a program to guarantee supplemental benefits, coverage under which must be available by January 1, 1983. Under the Act, participation by plans in this program is voluntary. Supplemental benefits under a plan are guaranteed only if and to the extent the plan elects coverage under the supplemental program. A plan's election to participate in the program can be made only within the time specified by PBGC regulations and cannot be made unless plan assets as of the end of the plan year preceding the election are at least 15 times benefit payments made for that year. Section 4022A(g)(2) also provides that the PBGC regulations, in addition to prescribing exceptions, if any, to the latter rule, shall provide "such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of [Title IV]."

The supplemental guarantee program is a self-financing program. To this end, a separate revolving fund on the books of the United States Treasury is established by section 4005(e). This fund is one of six revolving funds established on the books of the United States Treasury to be used by PBGC in carrying out its duties under Title IV. Monies in this fund are to be used exclusively for the purpose of making payments under the supplemental guarantee program. These monies are not available to make loans to or on behalf of any other fund. Similarly, monies in other funds are not available for the supplemental guarantee program. In addition, no money borrowed by PBGC from the United States Treasury pursuant to section 4005(c) is available



for the supplemental guarantee program (section 4005(f)(2)).

Under section 4006(a)(5)(B), the PBGC is authorized to prescribe premium rates for multiemployer plans for supplemental coverage that "reflect any reasonable considerations which the corporation determines to be appropriate." No revised schedule of premiums may go into effect without Congressional approval.

Finally, section 4022A(g)(5) authorizes the PBGC regulation to include rules that supersede the requirements of section 4245 (relating to insolvent plans), section 4261 (relating to financial assistance) and section 4281 (relating to multiemployer plans terminated by mass withdrawal), but only with respect to nonbasic benefits guaranteed under section 4022A(g).

## The Regulation

### Overview

In designing the supplemental guarantee program, the PBGC attempted to achieve the following goals:

- (1) To minimize premiums and the PBGC's administrative expenses, especially in the early years of the program;
- (2) To minimize the potential for anti-selection by a plan;
- (3) To structure a program that is simple to understand and administer; and
- (4) To afford plans flexibility, *e.g.*, the ability to choose the desired amount of coverage.

The proposed regulation sets forth rules under six parts in Subchapter I—Supplemental Guarantee Program for Multiemployer Plans, of the PBGC's regulations. Part 2690 contains all the definitions for Subchapter I. Part 2691 establishes the requirements for PBGC's guarantee of supplemental benefits and for coverage of a multiemployer plan under the supplemental guarantee program. Part 2692 prescribes rules for determining the amount of coverage for a participant and for a multiemployer plan under the supplemental guarantee program. Part 2693 prescribes the premiums for coverage under the supplemental guarantee program. Part 2694 also establishes a late entry fee for a plan that applies for its initial coverage after the plan year in which it is first eligible for coverage under the supplemental program. Part 2694 prescribes the requirements for PBGC financial assistance under the supplemental guarantee program. Finally, Part 2695 prescribes special rules for multiemployer plans covered by the program that experience a mass withdrawal.

### Part 2690—Definitions

Part 2690 contains all the definitions for Subchapter I. Section 2690.2 contains definitions of terms of general applicability. The subsequent sections contain definitions of terms specific to each part within the subchapter.

Two of the definitions in § 2690.2 are fundamental to an understanding of the supplemental guarantee program: "supplemental benefit" and "guaranteed supplemental benefit". These benefits may vary from one plan participant to another and may be different amounts for any individual participant.

"Supplemental benefit" is "the monthly benefit under the plan, except for the nonforfeitable benefit accrued prior to July 30, 1980 by participants and beneficiaries to whom section 4022A(h) of the Act applies, that would be guaranteed under section 4022A of the Act, determined without regard to section 4022A(c), reduced by the benefit guaranteed under section 4022A(c) of the Act." As discussed earlier, under section 4022A(c) of the Act, the maximum monthly guaranteed benefit is limited to the product of a) 100 percent of the first \$5 of a participant's benefit accrual rate and, generally, 75 percent of the next \$15 of a participant's benefit accrual rate, and b) a participant's number of years of credited service. Supplemental benefits are benefits in excess of the section 4022A(c) limits, *i.e.*, 25 percent of a participant's benefit accrual rate between \$5.01 and \$20, and 100 percent of a participant's benefit accrual rate above \$20. The following examples illustrate how to determine a participant's supplemental benefit:

Participant A has 20 years of credited service under a multiemployer plan and a monthly benefit of \$300 (based on the benefit in effect for at least five years). The benefit has not been reduced under section 411(a)(3)(E) of the Code. Participant A has a guaranteed monthly benefit of \$250. This is based on an accrual rate for purposes of section 4022A, without regard to the section 4022A(c) limits, of \$15; *i.e.*, \$300, the benefit in effect for five years or more, divided by 20, the number of years of credited service. This \$15 rate is reduced by the limits in section 4022A(c) to a guaranteed accrual rate of \$12.50; *i.e.*, 100 percent of the first \$5 = \$5, plus 75 percent of the remaining \$10 = \$7.50. The \$12.50 accrual rate is then multiplied by 20, the number of years of credited service, to determine Participant A's guaranteed benefit. Participant A's supplemental benefit is \$50 per month; *i.e.*, \$2.50, the excess of his or her accrual rate under section 4022A without regard to the section 4022A(c)

limits (\$15), over his or her accrual rate taking into account the section 4022A(c) limits (\$12.50), multiplied by 20, the participant's years of credited service.

Participant B has 20 years of credited service under a multiemployer plan and a monthly benefit of \$600 (based on the benefit in effect for at least five years). The benefit has not been reduced under section 411(a)(3)(E) of the Code. Participant B has a guaranteed monthly benefit of \$325. This is based on an accrual rate for purposes of section 4022A, without regard to the section 4022A(c) limits, of \$30; *i.e.*, \$600, the benefit in effect for five years or more, divided by 20, the number of years of credited service. This \$30 accrual rate is reduced by the limits in section 4022A(c) to a guaranteed accrual rate of \$16.25; *i.e.*, 100 percent of the first \$5 = \$5, plus 75 percent of the net \$15 = \$11.25. The \$16.25 accrual rate is then multiplied by 20, the number of years of credited service, to determine participant B's guaranteed benefit.

Participant B's supplemental benefit is \$275 per month; *i.e.*, \$13.75, the excess of his or her accrual rate under section 4022A without regard to the section 4022A(c) limits (\$30), over his or her accrual rate taking into account the section 4022A(c) limits (\$16.25), multiplied by 20, the participant's years of credited service. Note in this example that while no portion of a participant's accrual rate in excess of \$20 per month is subject to PBGC's basic benefit guarantee the entire amount is guaranteeable under this supplemental guarantee program.

"Guaranteed supplemental benefit" is "the supplemental benefit payable with respect to a participant that is guaranteed by the PBGC under the supplemental guarantee program, as determined under § 2692.3 of this subchapter." That section provides that a participant's guaranteed supplemental benefit is the lesser of his or her supplemental benefit or the number of units of supplemental coverage purchased by the plan multiplied by the participant's service multiplier. Under § 2692.3(b), the service multiplier is normally the participant's total number of years of credited service, although there is a special rule for a participant whose benefit has been reduced under section 411(a)(3)(E) of the Code (relating to a past-service disregard provision in a plan). Thus, PBGC will guarantee a participant's supplemental benefit only to the extent of the number of units of supplemental coverage purchased by his or her plan. In the first example above, PBGC will guarantee the participant's entire supplemental



benefit only if his or her plan has purchased at least 3 units of coverage ( $3 \times 20$  (the number of years of credited service) = \$60 of supplemental coverage.)

#### Part 2691—Requirements for Coverage

Part 2691 establishes the requirements for PBGC's guarantee of supplemental benefits and for coverage of a multiemployer plan under the supplemental guarantee program.

Section 2691.2 Provides that PBGC will guarantee the payment of supplemental benefits under a multiemployer plan if the plan (1) is covered by Title IV of ERISA, (2) is eligible for coverage, (3) satisfies the requirements for initial coverage, (4) pays its premiums when due, and (5) is insolvent.

A plan is eligible for coverage under § 2691.3 if (1) the fair market value of the plan assets as of the end of the pre-eligibility year equals at least 15 times the total amount of the benefit payments and expenses under the plan for that year ("15-year asset test"); (2) the fair market value of the plan's assets as of the end of the pre-eligibility year, plus expected investment earnings on those assets for the next ten plan years equal or exceed the total amount of expected benefit payments and expected expenses under the plan for that ten-year period ("10-year benefit payment test"); (3) the plan has not experienced a mass withdrawal on or before the date the plan's application for coverage is filed ("mass withdrawal test"); and (4) the maximum supplemental benefit under the plan, as of the date the plan's application for coverage is filed, is greater than zero. "Pre-eligibility year" is defined in § 2690.3 as "the plan year preceding the plan year in which an application for coverage that conforms with the requirements of § 2691.5 is filed."

The 15-year asset test is derived from section 4022A(g)(2)(B)(i) of the Act. That section provides that "unless the corporation determines otherwise, a plan may not elect supplemental coverage unless the value of the assets of the plan as of the end of the plan year preceding the plan year in which the election must be made is an amount equal to 15 times the total amount of the benefit payments made under the plan for that year." In order to reduce plan costs, the regulation provides that the plan's Form 5500 or Form 5500-C filed for the pre-eligibility year is used to determine whether this test is met. For example, under the Form 5500 for plan years beginning in 1981, the value of plan assets as of the end of the 1981 plan year is stated on line 13(h) of the Form 5500 and the total of benefit payments and other expenses for the

1981 plan year is stated on line 14(l). A special rule is included for small plans that have filed or are going to file a Form 5500-R (which does not include this information) for the pre-eligibility plan year. For such plans, the plan sponsor must submit a certification that the plan satisfies the 15-year asset test.

The 15-year asset test is a conservative means for determining eligibility. In view of the fact that this program is voluntary and self-financing, it is necessary, at least at the outset, to adopt a conservative approach to coverage under the program in order to preserve its financial integrity. The 15-year asset test is also necessary to avoid adverse selection by plans that will require financial assistance from PBGC in the near future.

PBGC believes that the 15-year asset test and the fact that this program is voluntary are indicative of Congress' intent that coverage under this program be made available only to plans in good financial condition that are able to pay benefits when due in the near future. However, satisfaction of the 15-year asset test does not necessarily indicate that a plan can pay future benefits when due. Accordingly PBGC is proposing two additional eligibility tests: the mass withdrawal test and the 10-year benefit payment test. The mass withdrawal test is necessary to protect the supplemental insurance program because a mass withdrawal is the result of a shrinkage in the plan's contribution base, and therefore will increase the likelihood that the plan will require financial assistance. The 10-year benefit payment test is intended for those rare situations where a plan that satisfies the 15-year asset test, nevertheless faces an imminent cash flow problem because of a significant increase in the benefits expected to be payable under the plan. For example, assume that all the retirees in a multiemployer plan are "spunoff" to a new plan, with the multiemployer plan transferring the retirees' entire accrued benefit liabilities and substantially all of the plan's assets to the new plan. As a result of this transaction the multiemployer plan satisfies the 15-year asset test. However, the plan has a significant number of active participants who are expected to enter pay status within the next several years. Because of this, the plan may be unable to pay benefits in the near future. In this situation, PBGC believes that the plan should be ineligible for coverage under the supplemental guarantee program.

Finally, a plan is eligible for coverage under § 2691.3 only if the maximum supplemental benefit under the plan, as of the date the plan's application for

coverage is filed, is greater than zero. "Maximum supplemental benefit" is defined in § 2690.2 as "the supplemental benefit to which an individual who is or could be a participant under the plan would be entitled at the earlier of age 65 or the plan's normal retirement age if he or she commenced participation at the earlier of the earliest possible entry age under the plan or age 22 and served continuously until the earlier of age 65 or the plan's normal retirement age, based on plan provisions currently in effect five years or more (under which such amount would be the highest)." Under this, a plan is eligible for coverage even if no actual plan participant has yet accrued a supplemental benefit. The purpose of this rule is to enable plans that are otherwise eligible and will have supplemental benefits based on the current plan provisions, to apply for coverage at the earliest possible date. (As will be explained more fully in the discussion of the late entry fee, a plan may defer applying for coverage without penalty until such time as it has participants in pay status who are entitled to supplemental benefits. It may nevertheless be to the plan's advantage to enroll sooner.)

Section 2691.4(a) of the regulation provides that a plan that is eligible for coverage shall become covered under the supplemental guarantee program upon filing with PBGC a written application for coverage, including the initial premium, and any late entry fee, due under Part 2693, and thereafter, approval by PBGC of the application. (See discussion of late entry fee under Part 2693 (relating to premiums)). Coverage is effective under the supplemental guarantee program as of the first day of the plan year during which a complete application is filed by the plan and the initial premium, and if applicable, late entry fee, is paid (§ 2691.4(c)).

Section 2691.4(d) of the regulation relates to changes in coverage. To preserve the fiscal integrity of the program, increases in units of supplemental coverage will be approved by PBGC only if the plan satisfies the requirements for initial coverage. A plan seeking an increase in coverage must satisfy anew the eligibility requirements in § 2691.3(a)(1) and (a)(2) (i.e., the 15-year asset test and the insolvency test; the plan by definition already satisfies the maximum supplemental benefit requirement in § 2691.3(a)(3)) and comply with the requirements for coverage in § 2691.4 (§ 2691.4(d)(1)). That is, the plan must file an application, pay the premium for the additional unit or



units, and thereafter obtain PBGC approval.

Decreases in coverage, on the other hand, do not create a potential for abuse of the supplemental insurance program, because such decreases reduce the exposure of the program. Accordingly, a plan may decrease its coverage without PBGC approval (§ 2691.4(d)(2)). A plan may decrease its coverage no more than once a year, by so indicating on the PBGC-1 and paying the reduced premium. A plan that has already filed its PBGC-1 for a plan year must wait until the following plan year to decrease its coverage. A plan may not decrease coverage in any plan year during which it is receiving financial assistance from PBGC under Part 2694 of this subchapter.

Requirements concerning the application for coverage are set forth in § 2691.5. In addition to paying the initial premium and any late entry fee, the application must include the information specified in § 2691.5(d). Among the information required is information that will enable PBGC to determine whether the eligibility tests in § 2691.3 are satisfied and to apply the maximum plan coverage limitation in § 2692.4:

(1) A copy of the plan's Form 5500, 5500-C or 5500-R filed for the pre-eligibility plan year. In addition, for a plan that filed a Form 5500-R for the pre-eligibility plan year, the application shall include the plan's most recent Form 5500 or Form 5500-C. (PBGC notes that a plan will be unable to submit an application for coverage until it has submitted its annual report form for the pre-eligibility plan year.)

(2) A copy of the two most recent actuarial reports.

(3) A statement updating the most recent actuarial report to show any material changes.

(4) A statement of the number of units of supplemental coverage necessary to guarantee the maximum supplemental benefit under the plan, determined as of the date the plan's application for coverage is filed, including supporting documentation.

(5) A certification by the plan sponsor that the plan has not experienced a mass withdrawal on or before the date the plan's application for coverage is filed.

(6) A certification by an enrolled actuary that the plan satisfies the test described in § 2691.3(a)(2), including supporting assumptions and method, and a statement that, in making the certification, due consideration was given to the distribution of benefit liabilities under the plan.

In addition, the plan sponsor must submit a certification indicating whether

the plan is subject to a late entry fee, and, if so, the amount of the fee (including interest), with supporting calculations. This certification shall include a statement of the year in which the plan first satisfied the 15-year asset test, and for that year and each year thereafter, the amount of the missed premium or a statement that there is no missed premium due for that year, including calculations or other evidence supporting the statement. (Calculation of the late entry fee is discussed in greater detail later in this preamble.) PBGC may request any additional information it needs, including information to verify the late entry fee (§ 2691.5(e)).

PBGC is required under § 2691.6(a) to accept a plan for coverage if it determines that the plan is eligible for coverage and has submitted a complete application. PBGC may, however, approve lower coverage than the plan requested, if it determines that the plan requested coverage greater than that allowed under § 2692.4 of this subchapter. PBGC's decision to approve or reject an application will be in writing (§ 2691.6(b)). If PBGC rejects the application, in whole or in part, PBGC's decision will state the reasons for the decision and advise the plan sponsor of its right to appeal the decision pursuant to Part 2606 of PBGC's regulations.

Section 2691.7 of the regulation contains rules relating to cancellation of coverage under the supplemental guarantee program. PBGC may cancel coverage if the plan fails to pay a premium when due (§ 2691.7(a)), or if PBGC determines that the plan's application contained a material misrepresentation (§ 2691.7(b)). A plan may cancel coverage upon notice to PBGC (§ 2691.7(c)).

If a plan fails to pay the full amount of any premium due by the last date prescribed for payment under Part 2693, PBGC shall issue the plan a notice of cancellation. A notice of cancellation is effective on the 31st day after it is issued, unless the plan pays its full premium before that date.

PBGC may cancel coverage if it determines that the application contained a material misrepresentation of fact, and that it would have rejected the application had not that fact been misrepresented (§ 2691.7(b)). PBGC will cancel a plan's coverage under this provision only after reviewing all the facts and circumstances, and coverage is cancelled as of the first day the plan was covered under the supplemental guarantee program. If coverage is cancelled, PBGC will refund premiums (and any late entry fee) paid by the plan (§ 2691.7(b)(1)). PBGC's decision to cancel coverage is subject to appeal

pursuant to Part 2606 of PBGC's regulations (§ 2691.7(b)(2)). However, the filing of an appeal will not stay the cancellation decision. If the plan appeals the decision and PBGC's Appeals Board determines that the initial determination to cancel coverage was erroneous, the Appeals Board will order that coverage be reinstated upon the plan's repayment of any amounts refunded and payment of any premium subsequently due. These same rules on cancellation also apply to an application for an increase in coverage.

Coverage will become incontestable as to the statements in the application after coverage (or the increased coverage) has been in effect for 10 years (§ 2691.7(b)(3)). PBGC believes that it is reasonable for plans and participants to be able to rely on supplemental guarantee program coverage after coverage has been in effect for this length of time. However, any individual who knowingly and willfully falsifies a material fact in the application will be subject to applicable criminal penalties under 18 U.S.C. 1001, no matter when the false statement is discovered.

Section 4022A(g)(2) of the Act provides that coverage "shall be irrevocable, except to the extent otherwise provided by regulations prescribed by the corporation." This regulation provides that a plan may cancel coverage without PBGC approval in accordance with the rules in § 2691.7(c). A plan may cancel its coverage by so indicating on the Form PBGC-1. A plan may not cancel coverage in any plan year in which it is receiving financial assistance from PBGC under Part 2694; nor may a plan cancel coverage in any plan year in which it has already filed its Form PBGC-1 and paid its premium pursuant to Part 2693. Finally, a plan that cancels its coverage shall not be eligible to re-enter the supplemental guarantee program.

PBGC believes that revocable coverage is consistent with traditional insurance principles and with the concept of a voluntary insurance program. In addition, PBGC is concerned that requiring an irrevocable election of coverage by a plan might deter participation by plans that are uncertain about their long-term interest in the program.

PBGC recognizes that making coverage revocable may increase its administrative burden by making it more difficult to anticipate future experience under the program. This will make it more difficult to prescribe a reasonable and adequate initial premium rate and to recommend



appropriate adjustments to Congress. Moreover, PBGC understands that revocable coverage could be disruptive to plans and participants because the decision to participate could be subject to yearly reevaluation. Nevertheless, the PBGC believes, on balance, that revocable coverage is preferable. The bar on re-entering the program after voluntarily cancelling coverage is necessary, in PBGC's view, to prevent abuse of the supplemental program and to provide some greater measure of stability to the program.

PBGC specifically requests public comment on these issues.

#### *Part 2692—Coverage Limitation for Participants and Multiemployer Plans*

Part 2692 prescribes rules for determining the amount of coverage of a participant and a multiemployer plan under the supplemental guarantee program. Section 2692.2 provides that the guaranteed supplemental benefit of a participant is the lesser of the participant's supplemental benefit or the number of units of supplemental coverage of the plan, multiplied by the participant's service multiplier. Each unit of supplemental coverage is equal to a monthly benefit of \$1.00 times a participant's "service multiplier" (§ 2692.3(a)). As discussed earlier in this preamble, a participant's "service multiplier" is normally a participant's total number of years of credited service under the plan (§ 2692.3(b)).

Units of supplemental coverage are available only in whole number increments (§ 2692.3(a)). Thus, to insure the entire supplemental benefit of a participant whose supplemental benefit is \$75 per month and who has 30 years of credited service under the plan, a plan must purchase 3 units ( $\$75 \div 30 = \$2.50$  supplemental accrual rate).

A plan may apply for any number of units of supplemental coverage, up to the limit described in § 2692.4, for the plan as a whole (§ 2692.3(a)). That is, a plan must purchase the same number of units for all participants in the plan, even though the guaranteeable supplemental benefits of the participants will be different amounts. In deciding to propose this guarantee structure, PBGC first considered and rejected two other alternatives. First, PBGC considered a guarantee structure that would make coverage available for all supplemental benefits, regardless of amount, under the plan. Under this structure a plan would pay a single premium for coverage of all participants' full supplemental benefit. PBGC also considered a guarantee structure that would permit a plan to vary coverage for

specific groups of participants, e.g., by bargaining units or regions. This structure might be attractive to plans that vary benefit levels for such groups.

PBGC has decided to propose only one guarantee structure at this time in the interest of simplicity and administrative ease. PBGC chose the plan-wide unit benefit guarantee structure, rather than the other two structures, because this structure is comparatively easy to administer, while still providing a plan with the flexibility to select the coverage it wants and the ability to obtain full coverage. Moreover, this structure is attractive because coverage of the plan as a whole will work in the same manner as under the basic benefits program.

Section 2692.4 of the regulation contains a limitation on the number of units of supplemental coverage a plan may purchase. A multiemployer plan that is eligible for coverage under § 2691.3 may apply for any number of units of supplemental coverage, up to the number of units necessary to guarantee the maximum supplemental benefit under the plan, determined as of the date the plan's application for coverage is filed. This rule is designed to make it impossible for plans to circumvent the requirement in § 2691.4(d)(1) that a plan that wants to increase its coverage must satisfy anew the eligibility requirements in § 2691.3, by prohibiting a plan from purchasing more units of supplemental coverage than it currently needs in anticipation of future benefit increases.

#### *Part 2693—Premiums*

Part 2693 prescribes the premium for coverage under the supplemental guarantee program. It also requires a late entry fee in certain instances for a plan that applies for initial coverage after the first year it is eligible for coverage under the supplemental program.

To participate in the supplemental program, a multiemployer plan is required to pay an annual premium. (Payment of the premium will not, however, result in coverage under the supplemental guarantee program for plans that have not satisfied the requirements for coverage under the program.) The premium is based on the number of plan participants, the number of units of supplemental coverage elected by the plan, and the supplemental premium rate (§ 2693.4(a)). The definition of "participant" for this purpose is the same definition as that used for payment of premiums for basic benefits guaranteed by PBGC. The supplemental premium rate is \$.30.

The premium rate for the supplemental program is based on the ultimate premium rate for multiemployer plans for basic benefits under section 4008(a)(3)(A)(iii)(IV) of the Act. To determine the supplemental premium rate, the premium rate for basic benefits was converted to a premium per \$1.00 of basic benefits guaranteed, based on the highest average guaranteed benefit payable under a multiemployer plan covered by Title IV. The cost of one unit of supplemental coverage is a pro-rata portion of the premium for the underlying basic benefits.

The form prescribed by Part 2693 for payment of premiums is Form PBGC-1 (§ 2693.2). A plan must use the same Form PBGC-1 for its premium payment under the supplemental guarantee program and for its premium for basic benefits.

The plan sponsor must file the plan's initial premium payment as part of its application for coverage (§ 2693.3(a)). No Form PBGC-1 is necessary with this premium payment. The filing may be made at any time. The plan administrator must make subsequent premium payments concurrently with premium payments for basic benefits i.e., no later than the last day of the seventh month following the close of the prior plan year (§ 2693.3(b)).

As noted above, under § 2691.7(a), if a plan fails to pay a premium when due, after the initial premium, PBGC shall issue a notice of cancellation. The notice is effective on the 31st day after it is issued, unless the plan pays the premium due on or before the 30th day. Under this proposed regulation, no interest or penalty charges are assessed for a premium payment made during the 30-day period, although a late payment charge will be imposed with respect to a premium for basic benefits paid during that time. (See Part 2610 of PBGC's regulations.) PBGC is considering assessing late payment interest and penalty charges for a premium payment under the supplemental program during the 30-day period in order to discourage routine late payments. PBGC specifically requests comments on this issue.

If PBGC determines that a plan has paid less than its full premium, it will issue a notice of cancellation, requiring that the amount due be paid within 30 days. The plan may appeal PBGC's determination. However, filing of an appeal will not stay PBGC's notice of cancellation; the plan must pay the amount determined due by PBGC within the 30-day period in order to avoid cancellation (§ 2693.3(f)). If the plan's appeal is successful, PBGC will refund



the overpayment with interest (§ 2693.7(c)).

As discussed earlier, § 2693.5 generally requires a late entry fee, in addition to an initial premium, for a plan that fails to apply for coverage during the first year in which it is eligible for coverage. The late entry fee equals the plan's missed premiums plus interest (§ 2692.5(a)).

The late entry fee is intended to encourage early entry into the supplemental guarantee program. It is consistent with and authorized by section 4022A(g)(2)(B) (i) and (iii) of the Act, which provide "that a plan must elect coverage under the supplemental program within the time permitted by the [PBGC] regulations" and that the PBGC regulations shall include "such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of this title." Section 4022A(g)(4)(B)(i) contemplates time limits within which a plan may enter the program. Accordingly, with the exceptions noted below, a plan that enters after the plan year in which it is first eligible is assessed a charge for late entry based on the premiums it would have paid had it applied when first eligible.

Moreover, PBGC believes it is necessary and appropriate for a viable program to charge a late entry fee. First, a late entry fee will encourage early entry. By doing so, it should enable PBGC to identify, at an early date, the majority of the plans interested in the program. This will assist PBGC in determining the viability of the program. Second, the fee will help finance the cost of the program. (Had the plan joined the program and paid premiums from when it was first eligible, those monies would have been available for the program.)

The late entry fee rules assume that a plan that satisfies the 15-year asset test is eligible for coverage under § 2691.3(a), unless the plan can demonstrate to the contrary. Accordingly, a plan that fails to file an application for coverage on or before the last day of the first plan year in which it satisfies the 15-year asset test described in § 2691.3(a)(1) is presumptively liable for a late entry fee based on the plan's missed premiums for each "missed premium year" (§ 2693.5(a)). A "missed premium year" is defined in § 2690.4 as "any plan year in which the plan satisfies the 15-year asset test described in § 2691.3(a)(1) of this subchapter but does not apply for

coverage in accordance with § 2691.5 of this subchapter." (As discussed hereafter, however, there is no missed premium due for any year for which the plan can demonstrate it was not, in fact, eligible for coverage under § 2691.3(a).) Because the effective date of the supplemental guarantee program is January 1, 1983, a plan's first missed premium year cannot be earlier than its plan year beginning in 1983.

Section 2693.5(b) provides that the amount of the missed premium for each missed premium year is the premium determined under § 2693.4 that would have been due had coverage been in effect for that year. For this purpose, the number of participants is the number reported on the plan's Form PBGC-1 filed for that year. The number of units of supplemental coverage used in this calculation is the lesser of a) one-half the number of units necessary to guarantee the maximum supplemental benefit under the plan as of the date the plan's application for coverage is filed, or b) the number of units of supplemental coverage actually necessary in each year to guarantee the highest supplemental benefit for a participant in pay status as of the last day of that year, as demonstrated by the plan sponsor to the satisfaction of PBGC.

PBGC considered several other rules for determining missed premium amounts. For example, PBGC considered basing the computation on the number of units of supplemental coverage for which the plan applies in its initial application. This rule was rejected because it is easily subject to abuse: a plan could apply for 1 unit of coverage in its initial application and apply for additional units the following year. PBGC also considered basing the missed premium amounts on one unit of supplemental coverage for each missed premium year. This rule was rejected because it would not adequately encourage early entry into the supplemental guarantee program. Finally, PBGC considered using the maximum supplemental benefit under the plan in each missed premium year. This rule was rejected as too harsh.

Consequently, PBGC has decided to propose a rule that normally assumes that the number of units in effect for each missed premium year is one-half the maximum number of units the plan could purchase, i.e., one-half the units necessary to guarantee the maximum supplemental benefit under the plan as of the date the plan's application for coverage is filed. However, if for any given year, the plan sponsor can demonstrate that the number of units of supplemental coverage necessary to

guarantee the highest supplemental benefit for a participant in pay status on the last day of that year is lower than one-half the maximum, then this lower number of units shall be used to compute the missed premiums. If the plan sponsor demonstrates that no participant in pay status as of the last day of a plan year had a supplemental benefit, then the missed premium for that year is zero (see discussion below).

Section 2693.5(b) contains special rules which provide, among other things, that a plan that satisfies the 15-year asset test described in § 2691.3(a)(1) will not have a missed premium due for any year for which it can show that it did not satisfy either of the other two eligibility requirements, and therefore, was not actually eligible for coverage in that year. Section 2693.5(b)(1) provides that there is no missed premium due for a missed premium year if the plan sponsor demonstrates to the satisfaction of PBGC that, as of the last day of that plan year, the plan could not satisfy the insolvency test described in § 2691.3(a)(2).

Section 2693.5(b)(2) gives somewhat broader relief and provides that there is no missed premium due for a missed premium year if the plan sponsor demonstrates to the satisfaction of PBGC that, as of the last day of that year, there was no participant in pay status entitled to a supplemental benefit. Thus, under this rule, even though a plan was eligible for coverage in a particular year, because the maximum supplemental benefit was greater than zero, it will not be charged a late entry fee with respect to that year if no pay status participant was receiving a supplemental benefit. PBGC believes that this rule achieves a fair result.

As discussed earlier, the maximum supplemental benefit test is used as an eligibility requirement in order to make the supplemental program available to more plans sooner. However, PBGC does not believe it is fair to assess a late entry fee with respect to a year in which a plan did not actually have benefits that would be insured under the program. Thus, PBGC concluded that a missed premium should accrue only for a plan year in which an eligible plan had either participants in pay status with supplemental benefits or participants whose accrued benefits included supplemental benefits. The latter alternative was rejected because of the administrative burden it would have placed on a plan to demonstrate that no participant had accrued a supplemental benefit, in order to avoid a missed premium charge for a given year.



PBGC expects that in many cases a plan sponsor will be able to demonstrate that there is no missed premium due for a year based on the maximum supplemental benefit under the plan for that year. That is, in any year when the maximum supplemental benefit is zero, it automatically follows that no actual plan participant could have a supplemental benefit. In those cases where the maximum supplemental benefit for a missed premium year is greater than zero, the plan would have to review the benefits of only those participants in pay status to determine whether it can satisfy this exception.

Finally, it should be noted that if a plan can demonstrate that the maximum supplemental benefit in a given year was zero, this demonstration will cover all prior missed premium years as well. This is because it is extremely unlikely that a plan with a maximum supplemental benefit of zero in one year, had a maximum supplemental benefit greater than zero in an earlier year. Similarly, if a plan can demonstrate for a given year that it had no pay status participants with supplemental benefits, that demonstration will also cover prior years. PBGC believes that the possibility that there was a participant in pay status with a supplemental benefit in an earlier year is too remote to warrant the administrative expense of making a plan prove that fact for each prior year.

Section 2693.5(b)(3) contains a special rule for multiemployer plans classified as "small" in any missed premium year. A plan is a small plan for a missed premium year if the plan filed a Form 5500-R or Form 5500-C for the preceding plan year. For all such years, there is no missed premium due.

PBGC believes this rule is appropriate because it would be relatively costly for these plans to attempt to determine and demonstrate that no participant in pay status had a supplemental benefit for a prior year. In addition, PBGC is concerned that the late entry fee would operate as a powerful disincentive for a small plan to apply for coverage under the supplemental guarantee program. Finally, PBGC believes that the amount of money involved (potentially waived) under this rule is relatively small.

Under § 2693.5(c), interest accrues on the amount of the missed premium for each missed premium year until the late entry fee is paid, at the rate prescribed in section 6621(b) of the Internal Revenue Code. Interest is compounded annually. This interest rate is the same rate applicable to late payments of basic benefits premiums. The rate is currently 20 percent per year, but it is variable and will change whenever the rate under section 6621(b) of the Code

changes. The date from which interest accrues for each missed premium year is the last day of that year.

Section 2693.6 of the regulation provides that premiums due from a multiemployer plan for coverage under the supplemental guarantee program for any plan year during which the plan receives financial assistance from the PBGC, either for guarantee supplemental benefits or for basic benefits, are not required to be paid, but instead shall be treated as financial assistance. This is consistent with the rule on payment of the basic benefits premium by multiemployer plans receiving financial assistance for basic benefits.

Section 2693.7 of the regulation sets forth rules for PBGC refunds of overpayments. Under § 2693.7(a), if PBGC rejects an application for coverage, PBGC shall refund to the plan the initial premium and late entry fee, if any. Section 2693.7(b) provides that if the PBGC cancels a plan's coverage for a material misrepresentation or a mass withdrawal, PBGC shall likewise refund to the plan any amounts paid for plan years beginning on or after the effective date of cancellation. If the plan miscalculates the premium or late entry fee and overpays, PBGC shall refund to the plan the excess payment (§ 2693.7(c)). Finally, under § 2693.7(d), if in response to a notice of cancellation a plan pays the premium demanded by PBGC but appeals that determination, and PBGC's Appeals Board finds that the plan did overpay, PBGC shall refund the overpayment amount with interest. Interest will be paid at the rate prescribed in section 6621(b) of the Code.

#### *Part 2694—Financial Assistance*

Part 2694 prescribes the rules for PBGC financial assistance to multiemployer plans covered by the supplemental guarantee program that are or will be insolvent and unable to pay when due supplemental benefits (§ 2694.1(a)). Part 2694 also establishes the procedure under which plan sponsors shall file an application for financial assistance with PBGC and the terms and conditions under which PBGC shall provide financial assistance (§ 2694.1(a)).

Section 2694.2 provides that the plan sponsor of a multiemployer plan covered by the supplemental guarantee program who determines that the plan is or will be insolvent and unable to pay supplemental benefits when due may apply to PBGC for financial assistance. Section 2694.2 also provides that the plan sponsor shall submit any information the PBGC determines it needs to review the application.

PBGC expects to promulgate, at a later date, specific information required to be included in an application. PBGC notes that there is little need to prescribe this information requirement at this time because of the remote possibility that a plan that is covered by the supplemental guarantee program and which thus satisfies the 15-year asset test, will require financial assistance within at least 10 years after coverage under the program is effective. PBGC believes it important in developing these information requirements to minimize reporting requirements and to avoid requiring the submission of duplicative information. Accordingly, PBGC will coordinate the information required to be submitted in an application for financial assistance under the supplemental guarantee program with the information required to be submitted in an application for financial assistance for basic benefits.

If, upon receipt of an application for financial assistance, PBGC verifies that the plan is or will be insolvent and unable to pay supplemental benefits when due, PBGC shall provide the plan financial assistance in an amount sufficient to enable the plan to pay guaranteed supplemental benefits under the plan (§ 2694.3(a)). PBGC decisions on applications for financial assistance shall be in writing. A PBGC decision to disapprove an application shall state the reasons for the determination and state that the plan may file an administrative appeal in accordance with Part 2606 (§ 2694.3(b)).

The rules in §§ 2694.4 and 2694.5 of the regulation for financial assistance for guaranteed supplemental benefits are virtually identical to the rules in section 4261(b) of the Act for financial assistance for basic benefits. Under § 2694.4(a), financial assistance shall be provided under such conditions as PBGC determines are equitable and are appropriate to prevent unreasonable loss to PBGC with respect to the plan. Financial assistance is a loan by PBGC to the plan. A plan which has received financial assistance shall repay the amount of such assistance to PBGC on such reasonable terms and for such periods as PBGC deems equitable and appropriate in the particular case. (See section 4067 of the Act; cf. section 4261(b)(2) of the Act, which requires financial assistance to be repaid to PBGC on reasonable terms consistent with regulations prescribed by PBGC.) PBGC may provide interim financial assistance under § 2694.5, pending determination of the proper amount of financial assistance, in such amounts as it considers appropriate in order to



avoid undue hardship to plan participants and beneficiaries.

Sections 4005(e) and 4005(f) of the Act establish a supplemental guarantee program fund on the books of the U.S. Treasury and require the fund to be self-supporting. In addition, no amounts borrowed from the U.S. Treasury pursuant to PBGC's borrowing authority may be used for the supplemental guarantee fund. Accordingly, § 2694.6 of the regulation provides that PBGC shall pay guaranteed supplemental benefits only to the extent there is money available in the supplemental benefit program fund to pay those benefits. PBGC specifically requests public comment on what rules should be adopted to deal with the situation where the program is expected not to have sufficient funds to pay all benefits when due. For example, should a reduction in financial assistance apply to all plans receiving assistance, or only to those that apply after the guarantee fund is exhausted?

One alternative for dealing with the potential insolvency problem would be to establish a much higher premium rate, in order to minimize the likelihood of benefit cutback. PBGC is disinclined to adopt this approach because of the difficulty in determining what that premium rate should be and because a much higher premium might deter many plans from entering the program. But PBGC requests comments on this alternative.

#### Part 2695—Mass Withdrawals

Part 2695 prescribes special rules for multiemployer plans covered by the supplemental guarantee program that experience a mass withdrawal. Section 2695.2(a) of the regulation provides that PBGC shall cancel the coverage of a multiemployer plan with respect to which there is a mass withdrawal if the mass withdrawal date occurs on or before the earlier of (1) the date on which the last collective bargaining agreement providing for employer contributions under the plan, which has an effective date on or after the plan's initial coverage date, expires, or (2) six years after the plan's initial coverage date.

A "mass withdrawal" is defined in § 2690.5 as "a withdrawal or withdrawals from a multiemployer plan as a result of which the plan is subject to section 4219(c) (1) (D) of the Act, and includes a termination by mass withdrawal under section 4041A (a) (2) of the Act and the withdrawal of substantially all the employers pursuant to an agreement or agreements to withdraw". Section 4219(c) (1) (D) of the Act requires that when a multiemployer

plan terminates by the withdrawal of every employer from a plan or where substantially all the employers withdraw from a plan pursuant to an agreement or agreements to withdraw from the plan, the plan's total unfunded vested benefits must be allocated among all such employers. "Initial coverage date" is defined in § 2690.5 as "the date as of which coverage under the supplemental guarantee program is first effective for a plan pursuant to § 2691.4(c)". "Mass withdrawal date" means—"(a) in the case of a termination by mass withdrawal, the date determined under section 4041A(b)(2) of the Act; or (b) in any other case, the earliest employer withdrawal date for an employer subject to section 4219(c) (1) (D) of the Act, as determined under section 4203(e) of the Act" (§ 2690.5).

PBGC believes it necessary to establish a minimum period of participation during which a plan is covered by the supplemental guarantee program before which a plan may experience a mass withdrawal and continue to be covered. PBGC notes that a mass withdrawal will generally increase the likelihood that a plan will require financial assistance under the supplemental guarantee program. The existence of coverage under the supplemental guarantee program may encourage a mass withdrawal. Therefore, a minimum period of program participation is necessary to deter a plan from electing coverage under the supplemental guarantee program in anticipation of the withdrawal of all or substantially all of the employers in the plan.

Because a mass withdrawal is most likely to occur on the date on which one or more collective bargaining agreements expire, the minimum participation period is tied to the bargaining cycle. The minimum participation period runs from the plan's initial coverage date and in the usual case, will not expire until each collective bargaining agreement under which the plan is maintained has been re-negotiated and thereafter expires. Thus, if the mass withdrawal date is before the date on which the last collective bargaining agreement providing for employer contributions under the plan, which has an effective date on or after the plan's initial coverage date, expires, the plan's coverage will be cancelled. However, in no event will PBGC cancel a plan's coverage because of a mass withdrawal, if the mass withdrawal date is more than six years after the plan's initial coverage date. PBGC believes that six years is a sufficiently long period to

deter possible abuse of the insurance system.

PBGC's decision to cancel a plan's coverage as the result of a mass withdrawal shall be in writing. The decision shall state the reasons for the determination, include a statement of the plan's right to appeal the decision pursuant to Part 2606 of PBGC's regulations, and state that the decision is effective on the date of issuance. The decision shall also state the date as of which the plan's coverage is cancelled. The cancellation date shall be the last day of the plan year preceding the plan year in which PBGC notifies the plan that its coverage is cancelled. PBGC shall refund to the plan any amount paid for plan years beginning after the date as of which the plan's coverage is cancelled. If the plan appeals PBGC's decision and PBGC's Appeals Board finds that the initial determination is erroneous the Appeals Board will order the plan reinstated subject to payment of any amounts refunded and any premium due.

PBGC believes it will be necessary for the supplemental guarantee program to contain certain special rules relating to merges, spinoffs or transfers of assets or liabilities. These rules would address plan coverage in the event a covered plan engaged in one of these transactions. Special rules are necessary because a merger, spinoff or transfer may create a significant risk to the supplemental guarantee program, as for example, in the case of the merger of a financially weak, non-covered plan into a covered plan, as well as create substantial administrative problems.

Special rules would need to address the following issues: Under what circumstances, in any, should a plan covered by the program continue to be covered when it is involved in a merger, spinoff or transfer? Should the result be different in the other plan involved in the transaction is a non-covered plan? In this latter situation, should coverage be continued only for those participants who were previously covered by the program? If so, what administrative problems would this create, and how might they be handled?

PBGC currently believes that, except for a *de minimis* transaction, the resulting plans or plan should be treated as new plans that must satisfy the eligibility requirements of § 2691.3(a) and the coverage requirements of § 2691.4 anew in order to participate in the program. Consistent with this rule, participants who, because of a merger, spinoff or transfer, are no longer in a plan covered by the program would not continue to be covered by the program.



This would avoid a tremendous administrative burden on both the non-covered plan and on the guarantee program.

A tentative cut-off for whether a transaction is *de minimis* would be if the transaction affects less than 3% of the total assets or liabilities. For example, in the case of a merger, a transaction would be *de minimis* if the present value of the accrued benefits of the merging plan not covered by the program is less than three percent of the fair market value of the assets of the covered plan.

Finally, under these rules, the merger of two covered plans would not result in cancellation of coverage. However, this raises the issue of the level of coverage, if the two plans had different levels. The approach which would seem to provide the greatest protection to the supplemental guarantee program would be to cover the merged plan at whatever was the lowest level of coverage of the merging plans.

PBGC specifically invites comments on these issues.

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The PBGC expects that the total annual premiums collected in the first few years of the program will be less than \$10 million. Moreover, this regulation is required by statute.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by PBGC. Defining "small plans" as those with under 100 participants, such plans represent only 10% of all multiemployer plans covered by PBGC (200 out of 2,000). Further, small multiemployer plans represent only .3% of all small plans covered by the PBGC (200 out of 61,200) and less than .05% of all small plans (200 out of 427,900). Moreover, the PBGC expects that a significant number of multiemployer plans are currently

ineligible for coverage under this program because of the 15-year asset test. In addition, the program is voluntary. Therefore, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

Interested parties are invited to submit comments on this proposed regulation. Comments should be addressed to: Assistant Executive Director for Policy and Planning, Pension Benefit Guaranty Corporation (140), 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name and address, identify this proposed regulation, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

In developing this proposed regulation, PBGC solicited comments from knowledgeable individuals outside the corporation. Copies of these comments are available for public inspection at the above address.

#### List of Subjects in 29 CFR Parts 2690-2695

Employee benefit plans, Pensions, Pension insurance.

In consideration of the foregoing, it is proposed to amend Chapter XXVI of Title 29, Code of Federal Regulations by adding a new Subchapter I consisting of Parts 2690 through 2695 to read as follows:

#### SUBCHAPTER I—SUPPLEMENTAL GUARANTEE PROGRAM FOR MULTIEMPLOYER PLANS

Part	
2690	Definitions
2691	Requirements for Coverage
2692	Coverage Limitations for Participants and Multiemployer Plans.
2693	Premiums
2694	Financial Assistance
2695	Mass Withdrawals

#### SUBCHAPTER I—SUPPLEMENTAL GUARANTEE PROGRAM FOR MULTIEMPLOYER PLANS

##### PART 2690—DEFINITIONS

Sec.	
2690.1	Purpose and scope.
2690.2	General definitions.
2690.3	Requirements for coverage.
2690.4	Premiums.
2690.5	Mass withdrawals.

Authority: Secs. 4002(b)(3), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1214-15 (1980) [29 U.S.C. 1302, 1322a].

#### § 2690.1 Purpose and scope.

This part sets forth the definitions used in Subchapter I. Section 2690.2 contains definitions of terms of general applicability. The subsequent sections contain definitions of terms specific to each part within the subchapter.

#### § 2690.2 General definitions.

For purposes of Subchapter I—  
"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Actuarial report" means a report submitted to the plan in connection with a valuation of plan assets and liabilities, for purposes of section 412 of the Code.

"Code" means the Internal Revenue Code of 1954, as amended.

"Guaranteed supplemental benefit" means the supplemental benefit payable with respect to a participant that is guaranteed by the PBGC under the supplemental guarantee program set forth in this subchapter, as determined under § 2692.2 of this subchapter.

"Insolvent" means that a plan is unable to pay benefits when due for the plan year. A plan terminated by mass withdrawal is not insolvent until it has first been amended to eliminate all benefits that are not eligible for the PBGC's guarantee under section 4022A(b) of the Act.

"Maximum supplemental benefit" means the supplemental benefit to which an individual who is or could be a participant under the plan would be entitled at the earlier of age 65 or the plan's normal retirement age if he or she commenced participation at the earlier of the earliest possible entry age under the plan or age 22 and served continuously until the earlier of age 65 or the plan's normal retirement age, based on plan provisions in effect five years or more (under which such amount would be the highest.)

"Multiemployer plan" means a pension plan described in section 4001(a)(3) of the Act.

"Participant" means any individual who is included in one of the categories below:

(a) *Active*.—(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is currently below the integration level in a plan that is integrated with Social Security.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a



break in service of the greater of one year or the break in service period specified in the plan.

(b) *Inactive.*—(1) *Inactive receiving benefits.* Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits.* Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased.* Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan administrator" means the plan administrator, as defined in sections 4001(a)(1) and 3(16) of the Act.

"Plan sponsor" means the plan sponsor, as defined in section 4001(a)(10) of the Act.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Supplemental benefit" means the monthly benefit under the plan, except for the nonforfeitable benefit accrued prior to July 30, 1980 by a participant to whom section 4022A(h) of the Act applies, that would be guaranteed under section 4022A of the Act without regard to the limitations in section 4022A(c), reduced by the benefit guaranteed under section 4022A(c) of the Act.

"Supplemental guarantee program" means the program described in section 4022A(g)(2) of the Act and established in this subchapter, under which the PBGC guarantees the payment of supplemental benefits.

"Terminate by mass withdrawal" means to terminate under section 4041A(a)(2) of the Act.

#### § 2690.3 Requirements for coverage.

For purposes of Part 2691—

"Last entry date" means the last day of the first plan year beginning on or

after January 1, 1983, in which a plan satisfies the 15-year asset test described in § 2691.3(a)(1) of this subchapter.

"Pre-eligibility year" means the plan year preceding the plan year in which an application for coverage that conforms with the requirements of § 2691.5 is filed.

#### § 2690.4 Premiums.

For purposes of Part 2693—

"Missed premium year" means any plan year in which the plan satisfies the 15-year asset test described in § 2691.3(a)(1) of this subchapter but does not apply for coverage in accordance with § 2691.5.

#### § 2690.5 Mass withdrawals.

For purposes of Part 2695—

"Initial coverage date" means the date as of which coverage under the supplemental guarantee program is first effective for a plan pursuant to § 2691.4(c).

"Mass withdrawal" means a withdrawal or withdrawals from a multiemployer plan as a result of which the plan is subject to section 4219(c)(1)(D) of the Act, and includes a termination by mass withdrawal under section 4041A(a)(2) of the Act and the withdrawal of substantially all the employers pursuant to an agreement or agreements to withdraw.

"Mass withdrawal date" means (a) in the case of a termination by mass withdrawal, the date determined under section 4041A(b)(2) of the Act; or (b) in any other case, the earliest employer withdrawal date for an employer subject to section 4219(c)(1)(D) of the Act, as determined under section 4203(e) of the Act.

### PART 2691—REQUIREMENTS FOR COVERAGE

Sec.

2691.1 Purpose and scope.

2691.2 Benefits guaranteed under supplemental guarantee program.

2691.3 Eligibility for coverage.

2691.4 Requirements for coverage.

2691.5 Application.

2691.6 PBGC action on application.

2691.7 Cancellation of coverage.

Authority: Secs. 4002(b)(3), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1214-15 (1980) [29 U.S.C. 1302, 1322a].

#### § 2691.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth the requirements for PBGC's guarantee of supplemental benefits and for coverage of a multiemployer plan under the supplemental guarantee program established in this subchapter.

(b) *Scope.* This part applies to each multiemployer plan covered under section 4021(a) of the Act and not excluded by section 4021(b), that applies for coverage or is covered under the supplemental guarantee program.

#### § 2691.2 Benefits guaranteed under supplemental guarantee program.

(a) *General requirements.* PBGC shall guarantee, in accordance with this subchapter, the payment of supplemental benefits under a multiemployer plan—

(1) To which section 4021 of the Act applies;

(2) Which is eligible for coverage in accordance with § 2691.3;

(3) Which satisfies the requirements for coverage in accordance with § 2691.4;

(4) Which pays all premiums when due in accordance with Part 2693 of this subchapter; and

(5) Which is insolvent.

(b) *Benefits guaranteed for a participant.* The supplemental benefits of a participant in a plan described in paragraph (a) of this section that are guaranteed by PBGC under the supplemental guarantee program shall be determined in accordance with § 2692.2 of this subchapter.

#### § 2691.3 Eligibility for coverage.

(a) *General requirement.* Except as provided in paragraph (b) of this section, a multiemployer plan is eligible for coverage under the supplemental guarantee program if it satisfies the following requirements:

(1) The fair market value of the plan's assets as of the end of the pre-eligibility plan year equals or exceeds 15 times the total amount of the benefit payments and expenses under the plan for that year.

(i) For a plan that has filed or is going to file a Form 5500 or Form 5500-C for the pre-eligibility plan year, that form shall be used to demonstrate satisfaction of the test described in paragraph (a)(1).

(ii) For a plan that has filed or is going to file a Form 5500-R for the pre-eligibility plan year, the plan sponsor's certification in accordance with § 2691.5(d)(12) shall be used to demonstrate satisfaction of the test described in paragraph (a)(1).

(2) The fair market value of the plan's assets as of the end of the pre-eligibility plan year, plus expected investment earnings on those assets for the next ten plan years, equal or exceed the total amount of expected benefit payments and expected expenses under the plan for that ten-year period.



(i) For a plan that has filed or is going to file a Form 5500 or Form 5500-C for the pre-eligibility plan year, that form shall be used to determine the fair market value of plan assets.

(ii) For a plan that has filed or is going to file a Form 5500-R for the pre-eligibility plan year, the fair market value of plan assets shall be the fair market value reported by the plan sponsor in accordance with § 2691.5(d)(12).

(iii) Expected investment earnings shall be determined using the same interest assumption used for determining the minimum funding requirement under section 412 of the Code.

(iv) Expected benefit payments shall be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(v) Expected expenses shall be determined using expenses in the pre-eligibility plan year, adjusted to reflect any anticipated changes.

(3) The plan has not experienced a mass withdrawal on or before the date the plan's application for coverage is filed.

(4) The maximum supplemental benefit under the plan, as defined in § 2690.2, is greater than zero, as of the date the plan's application for coverage is filed.

(b) *Re-entry.* A multiemployer plan is not eligible for coverage under the supplemental guarantee program if it was previously covered by the program and its coverage was cancelled in accordance with § 2691.7(a) or (c) of this part, or § 2695.2 of this subchapter. If coverage was cancelled pursuant to § 2691.7(b), the plan shall be eligible for re-entry if it meets the requirements in paragraph (a) of this section.

#### § 2691.4 Requirements for coverage.

(a) *General rule.* Except as provided in paragraph (b) of this section, a plan that is eligible for coverage under § 2691.3 shall become covered under the supplemental guarantee program upon—

(1) Filing with PBGC a written application that conforms with the requirements of § 2691.5, including payment of the initial premium and any late entry fee due under Part 2693 of this subchapter; and

(2) Approval by PBGC of the application.

(b) *Late entry fee.* If a plan fails to apply for coverage before its last entry date, as defined in § 2690.3, its application for coverage under the supplemental guarantee program shall include a late entry fee determined in accordance with § 2693.5 of this subchapter.

(c) *Effective date of coverage.* A plan whose application is approved by PBGC is covered under the supplemental guarantee program as of the first day of the plan year during which it files a complete application with PBGC.

(d) *Changes in coverage.*—(1) *Increase coverage.* A plan that is covered under the supplemental guarantee program may increase its coverage at any time upon satisfaction of the requirements of paragraph (a) of this section. When a plan applies for increased coverage, the premium described in paragraph (a)(1) is the premium owed for the plan's existing coverage plus the increased coverage requested. The effective date of increased coverage, if approved by PBGC, shall be the first day of the plan year in which the complete application is filed.

(2) *Decreased coverage.* A plan that is covered under the supplemental guarantee program may decrease its coverage without PBGC's approval by following the procedures, including time limits, for cancellation of coverage set forth in § 2691.7(c) of this part. A plan may not decrease coverage in any plan year during which it is receiving financial assistance from PBGC under Part 2694 of this subchapter.

#### § 2691.5 Application.

(a) *General.* Subject to the rule in § 2691.4(b) on late entry, an application for initial or increased coverage may be filed with PBGC at any time. In addition to the initial premium, and any late entry fee, due under Part 2693, the application shall include the information specified in paragraph (d) of this section.

(b) *Who shall file.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the application.

(c) *Where to file.* The application shall be delivered by mail or submitted by hand to the Division of Case Classification and Control (540), Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

(d) *Information.* Each application shall contain the following information:

(1) The name of the plan.  
(2) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with

the PBGC. The notice should indicate if no EIN or PIN has been assigned.

(4) A copy of the most recent IRS determination letter, if any, relating to the plan.

(5) A statement that the plan is applying for coverage (or increased coverage) under the supplemental guarantee program, indicating the number of units of supplemental coverage for which the plan is applying, i.e., the number of \$1.00 units requested.

(6) A statement of the number of units of supplemental coverage necessary to guarantee the maximum supplemental benefit under the plan, determined as of the date the plan's application for coverage is filed, including supporting documentation.

(7) A copy of the plan document currently in effect, i.e., a copy of the last restatement of the plan and all subsequent amendments.

(8) If not included in item 7, a copy of any amendment to the plan adopted or effective within the 5-year period preceding the beginning of the plan year during which the application is filed.

(9) A copy of the two most recent actuarial reports relating to the plan. The reports shall include a complete description of the actuarial assumptions and methods used; an age and service distribution of active and retired lives, and the associated liability distributions for retired lives; the number of contribution base units for the five most recent plan years; all asset and liability figures used to complete Schedule B of the Annual Report Form (Form 5500 series), including the value of vested benefits; and the contribution rates in effect.

(10) A statement updating the most recent actuarial report described in item 9 to show any material changes.

(11) A copy of the plan's Annual Report Form (Form 5500 series) for the pre-eligibility plan year, including schedules. In addition, for a plan that has filed a Form 5500-R for the pre-eligibility plan year, the application shall contain the plan's most recent Form 5500 or Form 5500-C, including schedules.

(12) For a plan that has filed a Form 5500-R for the pre-eligibility plan year, a certification by the plan sponsor that the plan satisfies the 15-year asset test described in § 2691.3(a)(1). The certification shall include a statement as to the fair market value of the plan's assets as of the end of the pre-eligibility year and the total amount of the benefit payments and expenses under the plan for that year.

(13) A certification by the plan sponsor that the plan has not



experienced a mass withdrawal on or before the date the plan's application for coverage is filed.

(14) A certification by an enrolled actuary that the plan satisfies the test described in § 2691.3(a)(3), including supporting assumptions and methods, and a statement that in making the certification due consideration was given to the distribution of benefit liabilities under the plan.

(15) The amount of the initial premium, paid to PBGC in the application, including supporting calculations.

(16) A certification by the plan sponsor indicating whether the plan is subject to a late entry fee, and, if so, the amount of the fee (including interest). The certification shall include a statement as to the year in which the plan first satisfied the 15-year asset test described in § 2691.3(a)(1), and for that year and each year thereafter, a statement with calculations as to the amount of missed premium or a statement that there is no missed premium due for that year, including evidence supporting the statement.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, PBGC may require the plan sponsor to submit any other information PBGC determines it needs to review an application.

(f) *Duplicate information.* In the case of plan applying for additional units of supplemental coverage, any of the information required by paragraph (d) of this section may be omitted if the identical information was previously filed with PBGC. When information is omitted pursuant to this paragraph, the application shall so indicate and shall state the date on which the information was submitted and that the information is still accurate and complete.

(g) *Date of filing.* An application is not considered filed until all the information required by paragraph (d) of this section and the initial premium, and, if applicable, late entry fee due have been submitted. The date of filing is the date on which all the information (or the final portion of the required information), the premium and late entry fee, if any, are hand-delivered or mailed, or the last such date if these items are submitted separately. An application shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

#### § 2691.6 PBGC action on application.

(a) *General.* PBGC shall accept a plan for coverage if it determines that the plan is eligible for coverage under § 2691.3 and has submitted an application that complies with § 2691.5. PBGC may, however, approve lower coverage than the plan requested, if it determines that the plan requested coverage greater than that allowed under § 2692.4 of this subchapter.

(b) *PBGC decision.* PBGC shall notify the plan sponsor in writing of its decision on the application. If PBGC approves the application, the decision shall state that the plan is covered under the supplemental guarantee program and specify the amount of coverage the plan will receive. If PBGC rejects the application, in whole or in part, the decision shall state the reasons for the rejection and include a statement of the plan sponsor's right to appeal the decision pursuant to Part 2606 of this chapter. Filing of an appeal shall not stay the effectiveness of a decision granting coverage for less than the amount applied for.

#### § 2691.7 Cancellation of coverage.

(a) *Missed premiums.* Unless the premium due is not payable under § 2693.6 of this subchapter because the plan is receiving financial assistance from PBGC, if the plan fails to pay any premium due under Part 2693 by the last date prescribed for payment in § 2693.3(b) or (c), PBGC shall issue the plan a notice of cancellation. The notice shall advise the plan that unless the full amount due is paid within 30 days after the date of the notice, the plan's coverage under the supplemental guarantee program shall be cancelled. Cancellation shall be effective on the 31st day after the date of the notice. If a plan's coverage is cancelled pursuant to this paragraph, it shall not be entitled to a refund of premiums paid, nor shall it be eligible to re-apply for coverage.

(b) *Material misrepresentation.* Except as provided in paragraph (b)(3) of this section, if PBGC determines that a plan's application for initial coverage or an increase in coverage contained a misrepresentation as to a material fact that would have caused PBGC to reject the application had not that fact been misrepresented, the plan's coverage shall be cancelled by PBGC. Cancellation shall be effective as of the plan's effective date under § 2691.4(c) of initial coverage or increased coverage, as applicable.

(1) *Effect of cancellation.* A plan whose coverage is cancelled pursuant to paragraph (b) of this section shall be entitled to a refund of amounts paid under the supplemental guarantee

program, in accordance with § 2693.7(b) of this subchapter. The plan shall be eligible to re-apply for coverage if it meets the tests in § 2691.3(a).

(2) *PBGC decision.* PBGC shall notify the plan in writing of its decision to cancel the plan's coverage. The decision shall state the reasons for the determination, the date as of which a plan's coverage is cancelled, include a statement of the plan's right to appeal the decision pursuant to Part 2606 of this chapter, and state that the decision is effective on the date of issuance.

(3) *Restriction on right to cancel.* After initial coverage or an increase in coverage has been in effect for 10 years, it shall be incontestable as to the statements contained in the application.

(c) *Cancellation by plan.* Except as provided in paragraph (c)(2) of this section, a plan may cancel coverage, without PBGC approval, by so indicating on its Form PBGC-1 filed in accordance with Part 2693 of this subchapter. To be effective, the form must be filed within the time limits for filing set forth in Part 2693. Cancellation of coverage shall be effective as of the last day of the plan year preceding the plan year for which the Form PBGC-1 is filed.

(1) *Effect of cancellation.* A plan that cancels its coverage pursuant to paragraph (c) of this section shall not be entitled to a refund of premiums (or any late entry fee) paid for plan years when coverage was in effect, nor shall it be eligible to re-apply for coverage.

(2) *Restrictions on right to cancel.* A plan may not cancel coverage in any plan year in which it is receiving financial assistance from PBGC under Part 2694 of this subchapter, nor in any plan year in which it has already filed its Form PBGC-1 and paid its premium pursuant to Part 2693.

### PART 2692—COVERAGE LIMITATIONS FOR PARTICIPANTS AND MULTIEMPLOYER PLANS

#### Sec.

- 2692.1 Purpose and scope.
- 2692.2 Guaranteed supplemental benefits.
- 2692.3 Plan coverage.
- 2692.4 Maximum plan coverage.

Authority: Secs. 4002(b)(3), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1214-15 (1980) (29 U.S.C. 1302, 1322).

#### § 2692.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules for determining the amount of coverage for a participant and a multiemployer plan under the supplemental guarantee program.

(b) *Scope.* This part applies to each multiemployer plan covered under



section 4021(a) of the Act and not excluded by section 4021(b), that applies for coverage or is covered under the supplemental guarantee program and to participants and beneficiaries in those plans.

#### § 2692.2 Guaranteed supplemental benefits.

The PBGC shall guarantee the payment with respect to a participant of a supplemental benefit provided under a multiemployer plan covered by the supplemental guarantee program equal to the lesser of the participant's supplemental benefit, or the number of units of supplemental coverage purchased by the plan multiplied by the participant's service multiplier (as defined in § 2692.3(b)).

#### § 2692.3 Plan coverage.

(a) *General.* Subject to the limitation in § 2692.4, a multiemployer plan that is eligible for coverage under § 2691.3 may apply for any number of units of supplemental coverage. The same number of units shall be purchased for all participants in the plan. Units may only be purchased in whole number increments. Each unit is equal to a monthly benefit with respect to a participant in the amount of \$1.00 times the participant's service multiplier.

(b) *Service multiplier.* Except as provided in the next sentence, a participant's service multiplier is the participant's total number of years of credited service, determined in accordance with section 4022A(c)(4) of the Act. In the case of a participant whose benefit under the plan has been reduced under section 411(a)(3)(E) of the Code and whose benefit guaranteed under section 4022A is determined under section 4022A(d)(1), the participant's service multiplier is the amount determined under section 4022A(d)(1) of the Act, divided by the amount determined under section 4022A(c)(1)(A) of the Act.

#### § 2692.4 Maximum plan coverage.

A multiemployer plan may not purchase more than the number of units of coverage necessary to guarantee the maximum supplemental benefit under the plan, determined as of the date the plan's application for coverage (or increased coverage) is filed.

### PART 2693—PREMIUMS

Sec.

- 2693.1 Purpose and scope.
- 2693.2 Form.
- 2693.3 Requirement to pay premiums.
- 2693.4 Premium rate.
- 2693.5 Late entry fee.
- 2693.6 Premium for plan year during which plan receives financial assistance.

Sec.

- 2693.7 Overpayments.
- 2693.8 Date of filing or payment.
- 2693.9 Computation of time.

Authority: Secs. 4002(b)(3), 4006(a), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1), 105(a) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1264-66, 1214-15 (1980) (29 U.S.C. 1302, 1306, 1322a).

#### § 2693.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe the premiums for coverage of multiemployer plans under the supplemental guarantee program established in this subchapter. This part also prescribes the late entry fee for a plan that applies for coverage after its last entry date.

(b) *Scope.* This part applies to each multiemployer plan that applies for coverage or is covered under the supplemental guarantee program.

#### § 2693.2 Form.

The form prescribed by this part for the payment of premiums is Form PBGC-1. A completed Form PBGC-1 shall accompany all payments of premiums under this part (other than the initial premium payment). A plan shall use a single Form PBGC-1 for both its premium payment under this part and under Part 2610 (premium for basic benefit coverage) of this chapter.

#### § 2693.3 Requirement to pay premiums.

(a) *Initial premium.* The plan sponsor of a plan that is applying under § 2691.4 of this subchapter for coverage under the supplemental guarantee program shall pay the initial premium due as part of its application for coverage. The payment check shall be made payable to PBGC and shall show the name of the plan and the EIN-PIN with respect to the plan on its face.

(b) *Premium for covered plan.* The plan administrator of each plan covered under the supplemental guarantee program shall file Form PBGC-1 and pay the premium due, in accordance with the instructions accompanying the form, no later than the last day of the seventh month following the close of the prior plan year.

(c) *Change of plan year.* Notwithstanding paragraph (b) of this section, the plan administrator of a plan that is covered under the supplemental guarantee program and that changes its plan year, shall file Form PBGC-1 and pay the premium due for the short plan year, in accordance with the instructions accompanying the form, no later than the later of—

(1) The last day of the seventh month following the close of the short plan year; or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(d) *Non-payment of premium.* Except as provided in paragraphs (d)(1) and (d)(2), the failure of the plan administrator of a plan covered by the supplemental guarantee program to pay the full premium due under this part within the time limits prescribed in this section shall result in the cancellation of that plan's coverage under the program, in accordance with § 2691.7.

(1) *Non-payment of initial premium.* A plan has not satisfied the requirement for coverage under § 2691.4(a)(1) (filing a complete application), until it has paid the full initial premium due pursuant to this part.

(2) *Financial assistance.* Paragraph (d) of this section shall not apply to a premium that need not be paid pursuant to § 2693.6 of this part for a year in which the plan is receiving financial assistance under Part 2694 of this subchapter or financial assistance under section 4261 of the Act.

(e) *Duration of obligation to pay premiums.* Premiums shall continue to accrue under this part for each plan year until the end of the plan year in which a multiemployer plan's coverage is cancelled in accordance with § 2691.7 or § 2695.2 of this subchapter or until the plan's assets are distributed in connection with the termination of the plan.

(f) *Contested premium amounts.* If PBGC determines that a plan has paid less than the full premium due under this part, it shall so notify the plan, as described in § 2691.7(a) of this subchapter. The plan may appeal PBGC's determination pursuant to Part 2606 of this chapter. However, filing of an appeal shall not stay the effect of a notice of cancellation issued under § 2691.7(a) of this subchapter.

#### § 2693.4 Premium rate.

(a) *General.* A multiemployer plan shall pay for each plan year a premium to PBGC for coverage under the supplemental guarantee program in an amount equal to the product of—

(1) The number of individuals who were participants in the plan on the last day of the preceding plan year;

(2) The number of units of supplemental coverage in effect for the year, or for which the plan is applying; and

(3) The supplemental premium rate of \$.30.

(b) *Short plan year.* For any plan that changes its plan year, the plan shall pay the applicable premium under paragraph (a) for each individual who is a



participant in the plan on the last day of the short plan year.

#### § 2693.5 Late entry fee.

(a) *General.* A multiemployer plan that fails to apply for initial coverage on or before the last day of the first plan year in which the plan satisfies the 15-year asset test set forth in § 2691.3(a)(1) shall be presumptively liable for a late entry fee determined under this section. The late entry fee shall equal the total amount of the plan's missed premiums, determined under paragraph (b) of this section, plus interest, determined under paragraph (c) of this section, for each missed premium year. However, there is no missed premium due for any year in which the plan did not, in fact, satisfy all of the eligibility requirements in § 2691.3(a), as demonstrated in accordance with paragraphs (b)(1) and (b)(2) of this section.

(b) *Computation of missed premiums.* Except as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section, the amount of the missed premium for each missed premium year is equal to the premium determined under § 2693.4 of this part that would have been due had coverage been in effect for each missed premium year, based on the plan's Form PBGC-1 filed for that year and assuming coverage in each year of the lesser of one-half the number of units of supplemental coverage necessary to guarantee the maximum supplemental benefit under the plan as of the date the plan's application for coverage is filed, or the number of units of supplemental coverage actually necessary to guarantee the highest supplemental benefit for any participant in pay status under the plan as of the last day of that year, as demonstrated by the plan sponsor to the satisfaction of PBGC.

(1) There is no missed premium for any missed premium year if the plan sponsor demonstrates to the satisfaction of PBGC that, as of the last day of that plan year, the plan could not satisfy the plan solvency requirement described in § 2691.3(a)(2).

(2) There is no missed premium for any missed premium year (and all prior missed premium years) if the plan sponsor demonstrates to the satisfaction of PBGC that there is no supplemental benefit payable with respect to any participant in pay status as of the last day of that year.

(3) There is no missed premium for any missed premium year if the plan filed a Form 5500-R or Form 5500-C for the preceding plan year.

(c) *Interest.* Interest shall accrue on the amount of the missed premium for each missed premium year from the last day of the year until the late entry fee is

paid. Interest shall be at the rate prescribed in section 6621(b) of the Code and shall be compounded annually.

(d) *Contested amount.* In any case where the plan disputes PBGC's determination of the amount due under this section, the plan may appeal PBGC's determination pursuant to Part 2606 of this chapter. However, notwithstanding the filing of an appeal, a plan shall not be covered under the supplemental guarantee program until it has paid the late entry determined due by PBGC.

#### § 2693.6 Premium for plan year during which plan receives financial assistance.

The premium due under this part need not be paid for any plan year during which a plan receives financial assistance from PBGC pursuant to Part 2694 of this subchapter or section 4261 of the Act. Any premium not paid pursuant to this section shall be treated as financial assistance under Part 2694.

#### § 2693.7 Overpayments.

(a) *Rejected applications.* If a plan files an application for coverage and pays its initial premium and late entry fee, if any, and thereafter PBGC rejects the application, PBGC shall refund to the plan the total amount paid.

(b) *Cancellation for material misrepresentation or mass withdrawal.* If PBGC cancels a plan's coverage under the supplemental guarantee program under § 2691.7(b) (for a material misrepresentation) or under § 2695.2(a) (for a mass withdrawal), the PBGC shall refund to the plan any amounts paid by the plan under the supplemental guarantee program for plan years beginning on or after the effective date of cancellation.

(c) *Erroneous computation by plan.* If a plan computes and pays an amount that exceeds the premium payment or late entry fee due under this part, PBGC shall refund to the plan the excess amount.

(d) *Contested amounts.* If a plan pays a premium or late entry fee and then appeals the amount of the premium or late entry fee pursuant to § 2693.3(f) or § 2693.5(d), respectively, and the decision on the appeal finds that there has been an overpayment, PBGC shall refund to the plan the excess amount, with interest at the rate specified in section 6621(b) of the Code from the date of the overpayment to the date of the refund.

#### § 2693.8 Date of filing or payment.

Any form required to be filed and any payment required to be made under the provisions of this part shall be considered to have been filed or made

on the date on which it is hand-delivered or mailed. A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

#### § 2693.9 Computations of time.

In computing any period of time under this part, the day of the act, event or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a federal holiday. For the purpose of computing interest under § 2693.5, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

### PART 2694—FINANCIAL ASSISTANCE

#### Sec.

- 2694.1 Purpose and scope.
  - 2694.2 Application for financial assistance.
  - 2694.3 PBGC action on application.
  - 2694.4 Financial assistance.
  - 2694.5 Interim financial assistance.
  - 2694.6 Limitation on payment of supplemental benefits.
  - 2694.7 Prohibition on changes in coverage.
- Authority: Secs. 4002(b)(3), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1214-15 (1980) (29 U.S.C. 1302, 1322a).

#### § 2694.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe the rules for PBGC financial assistance to multiemployer plans covered by the supplemental guarantee program that are or will be insolvent and unable to pay when due supplemental benefits. This part establishes the procedure under which plan sponsors shall file an application for financial assistance with PBGC and the terms and conditions under which PBGC shall provide financial assistance.

(b) *Scope.* This part applies to multiemployer plans that are covered by the supplemental guarantee program and are or will be insolvent and unable to pay when due supplemental benefits.

#### § 2694.2 Application for financial assistance.

A plan sponsor of a multiemployer plan covered by the supplemental guarantee program who determines that the plan is or will be insolvent and unable to pay supplemental benefits when due may apply to PBGC for financial assistance. Thereafter, the plan



sponsor shall submit any information PBGC determines it needs to review the application.

#### § 2694.3 PBGC action on application.

(a) *General.* If, upon receipt of an application for financial assistance under § 2694.2, PBGC verifies that the plan is insolvent and unable to pay supplemental benefits when due, PBGC shall provide the plan financial assistance in an amount sufficient to enable the plan to pay guaranteed supplemental benefits due under the plan.

(b) *PBGC decision.* PBGC's decision under this section approving or disapproving an application, in whole or in part, shall be in writing. If PBGC disapproves an application, in whole or in part, the decision shall state the reasons for the determination, include a statement of the plan's right to appeal the decision pursuant to Part 2606 of this chapter and state that the decision is effective on the date of issuance.

#### § 2694.4 Financial assistance.

(a) *Terms and conditions.* Financial assistance shall be provided under such conditions as PBGC determines are equitable and are appropriate to prevent unreasonable loss to PBGC with respect to the plan.

(b) *Repayment.* A plan which has received financial assistance shall repay the amount of such assistance to PBGC on such reasonable terms and for such periods as PBGC deems equitable and appropriate in the particular case.

#### § 2694.5 Interim financial assistance.

Pending determination of the proper amount of financial assistance under § 2694.3(a), PBGC may provide interim financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan

participants and beneficiaries.

#### § 2694.6 Limitation on payment of supplemental benefits.

Notwithstanding §§ 2694.3(a) and 2694.5 of this part, PBGC shall provide financial assistance to pay supplemental benefits guaranteed under the supplemental guarantee program only to the extent that there is money available to do so in the supplemental guarantee program fund established under section 4005(e) of the Act.

#### § 2694.7 Prohibition on changes in coverage.

A plan may not cancel or decrease its coverage under the supplemental guarantee program in a year during which the plan receives financial assistance under this part.

### PART 2695—MASS WITHDRAWALS

Sec.

2695.1 Purpose and scope.

2695.2 Mass withdrawals.

Authority: Secs. 4002(b)(3), 4022A(g)(2), Pub. L. 93-406, as amended by secs. 403(1) and 102 (respectively), Pub. L. 96-364, 94 Stat. 1302, 1214-15 (1980) [29 U.S.C. 1302, 1322a].

#### § 2695.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe special rules for multiemployer plans that are covered by the supplemental guarantee program that experience a mass withdrawal.

(b) *Scope.* This part applies to mass withdrawals, including a termination by mass withdrawal under section 4041A(a)(2) of the Act and the withdrawal of substantially all employers in a plan pursuant to an agreement or agreements to withdraw.

#### § 2695.2 Mass withdrawals.

(a) *General rule.* PBGC shall cancel the coverage under the supplemental guarantee program of a multiemployer

plan with respect to which there is a mass withdrawal if the mass withdrawal date occurs on or before the earlier of—

(1) The date on which the last collective bargaining agreement providing for employer contributions under the plan, which has an effective date on or after the plan's initial coverage date, expires; or

(2) Six years after the plan's initial coverage date.

#### (b) Cancellation of coverage.

Cancellation shall be effective as of the last day of the plan year preceding the plan year in which PBGC notifies the plan that its coverage is cancelled. PBGC shall make a refund to the plan for any overpayment in accordance with § 2693.7(b) of this subchapter. If a plan's coverage is cancelled pursuant to this paragraph, it shall not be eligible to re-apply for coverage.

(c) *PBGC decision.* PBGC's decision to cancel a plan's coverage under this section shall be in writing. PBGC's decision shall state the reasons for the determination, the date as of which the plan's coverage is cancelled, include a statement of the plan's right to appeal the decision pursuant to Part 2606 of this chapter and state that the decision is effective on the date of issuance.

Issued at Washington, D.C., this 26th day of January 1983.

Raymond Donovan,

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 Notice of Proposed Rulemaking.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

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