

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

■ 1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 2. In § 601.12, redesignate paragraph (f)(3)(i)(D) as paragraph (f)(3)(i)(E) and add new paragraph (f)(3)(i)(D) to read as follows:

§ 601.12 Changes to an approved application.

* * * * *

(f) * * *

(3)(i) * * *

(D) A change to the information required in § 201.57(a) of this chapter as follows:

(1) Removal of a listed section(s) specified in § 201.57(a)(5) of this chapter; and

(2) Changes to the most recent revision date of the labeling as specified in § 201.57(a)(15) of this chapter.

* * * * *

Dated: November 10, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27254 Filed 11–17–08; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION**29 CFR Parts 4041 and 4042**

RIN 1212–AB14

Disclosure of Termination Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to implement section 506 of the Pension Protection Act of 2006 (Pub. L. 109–280) which amends sections 4041 and 4042 of ERISA. These amendments require that a plan administrator disclose information it has submitted to PBGC in

connection with a distress termination filing, and that a plan administrator or plan sponsor disclose information it has submitted to PBGC in connection with a PBGC-initiated termination. The new provisions also require PBGC to disclose the administrative record in a PBGC-initiated termination. The disclosures must be made to an affected party upon request.

DATES: Effective December 18, 2008. For information about applicability of the amendments made by this rule, see Applicability in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Kenneth Cooper, Assistant General Counsel; or Catherine Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:**Background**

Pension Benefit Guaranty Corporation (“PBGC”) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. 1301–1461. Sections 4041 and 4042 of ERISA govern the termination of single-employer defined benefit pension plans that are subject to Title IV. A plan administrator may initiate a distress termination by sending a notice of intent to terminate to all affected parties pursuant to section 4041(a)(2). Under section 4042 of ERISA, PBGC may itself initiate proceedings to terminate a pension plan if it determines that certain conditions are present.

Under section 4041(c), a single-employer plan may terminate in a distress termination if PBGC determines that the requirements of section 4041(c)(2)(B) are met. Before PBGC can make this determination, the plan administrator must provide certain information to PBGC pursuant to section 4041(c)(2)(A). Under § 4041.45(c) of PBGC’s regulation on Termination of Single Employer Plans, 29 CFR part 4041, PBGC may also require the submission of additional information.

PBGC determines whether a plan meets the criteria for a distress termination or a PBGC-initiated termination through an informal adjudicatory process. If PBGC staff believe that a plan should be terminated, a written recommendation is prepared. With certain exceptions, the

recommendation is then reviewed by the Trusteeship Working Group (“TWG”), an interdepartmental body comprised of representatives from PBGC’s financial, actuarial, policy, regulatory, and legal departments. If the TWG agrees with the staff recommendation, it forwards its own recommendation concerning the termination to the Director or other designated official (“Deciding Official”). All determinations are documented in a trusteeship decision record.

As part of the informal adjudicatory process, PBGC staff may present or make available to the TWG information and documents that relate to a termination recommendation and, if the TWG recommends termination, to the Deciding Official. This material may include information that PBGC has obtained from the plan sponsor or plan administrator, as well as other information that PBGC has obtained or generated.

For PBGC-initiated terminations, if the Deciding Official approves the termination, PBGC sends a notice to the plan administrator that the determination has been made (“Notice of Determination”). The plan may then be terminated by agreement or PBGC may apply to the appropriate district court for a decree adjudicating that the plan must be terminated.

PPA 2006 Amendments

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109–280 (“PPA 2006”). Section 506 of PPA 2006 adds disclosure provisions to both sections 4041 and 4042 of ERISA. These provisions allow an affected party to request information related to a plan termination from the plan administrator in the case of a distress termination under section 4041, and from the plan administrator, plan sponsor, and PBGC in the case of a termination under section 4042. “Affected party” is defined in section 4001(a)(21) of ERISA to include each participant in the plan, each beneficiary under the plan, each employee organization representing plan participants, and PBGC.

With respect to distress terminations, the new provisions require that a plan administrator that has filed a Notice of Intent to Terminate must provide to an affected party, upon request, information submitted to PBGC in conjunction with the distress termination. This information must be provided not later than 15 days after receipt of the request. One of the new provisions allows a court to limit disclosure of confidential information to an authorized representative of the

participants and beneficiaries that agrees to keep the information confidential.

With respect to PBGC-initiated terminations, the new provisions require that, following receipt by the plan administrator of a Notice of Determination, the plan sponsor, plan administrator, and PBGC must provide information related to the termination to an affected party upon request. The plan sponsor or plan administrator must, not later than 15 days after receipt of a request, provide copies of any information it provided to PBGC in connection with the termination. PBGC must, not later than 15 days after receipt of a request, provide a copy of the administrative record, including the trusteeship decision record. As in the distress termination provisions, one of the new provisions allows a court to limit disclosure of confidential information to an authorized representative. The new provisions are applicable to terminations initiated on or after August 17, 2006.

On December 5, 2007 (at 72 FR 68542), PBGC published a proposed rule to amend sections 4041 and 4042 of ERISA to implement the provisions of section 506 of PPA 2006. PBGC received two comments on the proposed rule, one from a labor union and one from a business federation.

One commenter suggested that the final rule explicitly recognize that the new disclosure provisions in sections 4041(c)(2)(D) and 4042(c)(3) of ERISA do not alter any disclosure obligations under other federal statutes and rules. The provisions added by section 506 of PPA 2006 apply only to the disclosure of information in connection with a distress termination or PBGC-initiated termination under Title IV of ERISA and are independent of disclosure requirements in other statutes. However, PBGC does not believe it is necessary to revise the final regulation in response to this comment.

Both commenters commented on the confidentiality provisions in the final rule. One commenter suggested that the final rule provide some guidance regarding reasonable fees that may be charged by a plan administrator. These points are discussed below with the topics to which they relate.¹

¹ One commenter suggested that the final regulation allow for an exception to the assumed receipt date of three business days after PBGC issues a notice that a plan should be terminated. The commenter suggested that a plan administrator or plan sponsor be allowed to use the actual receipt date if it can prove that actual receipt occurred after three business days. The commenter incorrectly stated that the assumed receipt date starts the clock for the fifteen business days a plan administrator has to respond to a request from an affected party

The final regulation is unchanged from the proposed regulation, except that the final regulation states explicitly, with reference to the applicable statutory provisions, that plan administrators in distress and PBGC-initiated terminations, and plan sponsors in PBGC-initiated terminations, may charge a reasonable fee for any information provided in other than electronic form.

Final Regulation

General Provisions

Section 506 of PPA 2006 generally requires that information be provided to an affected party upon request. The final regulation requires that all requests to the plan administrator, plan sponsor, or PBGC be made in writing, and contain information relating to the plan, and the requestor's status as an affected party.

Section 506 of PPA 2006 requires that the plan administrator, plan sponsor, or PBGC provide information not later than 15 days after receipt of a request. A plan administrator or plan sponsor must also provide information not later than 15 days after the submission of additional information to PBGC. For this purpose, because a large amount of information may need to be disclosed in a short time, PBGC is interpreting "day" to mean "business day," as defined in § 4000.22 of PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention, 29 CFR part 4000.

Sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D) of ERISA, added by PPA 2006, state that PBGC may prescribe the form and manner of the provision of information under the respective provisions. These provisions state that information may be delivered "in written, electronic or other appropriate form to the extent such form is reasonably accessible" to the individual who makes the request. PBGC's issuance rules in part 4000, subpart B, are appropriate for the provision of information under sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D). Accordingly, the provision of information under section 4041(c)(2)(D)(iii) will be governed by § 4041.3 of PBGC's current regulation, which provides that subpart B of part 4000 applies to issuances relating to plan terminations. The date of issuance will be determined in accordance with

for information about the termination. However, the assumed receipt date is the earliest date on which an affected party may make a request for information. If a plan administrator or plan sponsor receives a request from an affected party on or after that date, it then has fifteen business days to provide the information.

part 4000, subpart C, as provided in § 4041.3.

With respect to a PBGC-initiated termination, the final regulation requires that a plan administrator or plan sponsor respond to a request under section 4042(c)(3)(D) of ERISA in accordance with part 4000, subpart B. The final regulation further provides that the date of issuance is determined in accordance with the rules in part 4000, subpart C.

Sections 4041(c)(2)(D)(iii)(II) and 4042(c)(3)(D)(ii) of ERISA provide that a plan administrator, in the case of a distress termination, and a plan sponsor, in the case of a PBGC-initiated termination, may charge a reasonable fee for any information provided in other than electronic form. As noted above, a commenter suggested that PBGC provide, at minimum, some direction to plan administrators and plan sponsors with regard to what constitutes a reasonable fee. The commenter suggested that PBGC look to FOIA and to section 104(b)(4) of ERISA.

Unlike FOIA, which states that "each agency shall promulgate regulations * * * specifying the schedule of fees applicable to the processing of requests * * *" (5 U.S.C. § 552(a)(4)(A)(i)), there is no directive to establish fee schedules in sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D) of ERISA. Moreover, while these sections state that PBGC may prescribe the form and manner of disclosure, they do not contain language similar to that in section 104(b)(4) of ERISA with respect to prescribing the maximum amount of a reasonable fee. For these reasons, PBGC has decided not to accommodate the commenter's suggestion.

PBGC has added references to sections 4041(c)(2)(D)(iii)(II) and 4042(c)(3)(D)(ii) of ERISA to the final regulation.

Information To Be Disclosed by Plan Administrator in Distress Terminations

Under section 4041(a)(2) of ERISA, a plan administrator that seeks to terminate a plan in a distress termination must provide a notice of intent to terminate to each affected party. The notice must include information required under PBGC's regulations. Section 4041.43 of PBGC's regulation on Termination of Single Employer Plans specifies the information that must be included in a notice of intent to terminate that is issued to affected parties other than PBGC. The regulation also requires that a separate notice with additional information be filed with PBGC on PBGC Form 600, Distress Termination, Notice of Intent to Terminate. After the

notices of intent to terminate have been issued to affected parties other than PBGC and the Form 600 has been filed with PBGC, additional information must be submitted to PBGC at a later date in accordance with section 4041(c)(2) of ERISA and § 4041.45 of the regulation.

Section 4041(c)(2)(D)(i) of ERISA, added by PPA 2006, states in relevant part:

A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under subsection (a)(2) not later than 15 days after—

(I) receipt of a request from the affected party for the information; or

(II) the provision of new information to the corporation relating to a previous request.

PBGC is interpreting this provision as requiring disclosure of the Form 600 and any additional information submitted to PBGC under section 4041(c)(2) of ERISA. PBGC recognizes that because the statute references only section 4041(a)(2), which addresses the notice of intent to terminate, it is possible to read section 4041(c)(2)(D)(i) as requiring that a plan administrator disclose only the Form 600. Such a narrow reading, however, would be at odds with Congress's intent to provide greater disclosure of information submitted to PBGC in connection with a distress termination.

The Technical Explanation of PPA 2006 prepared by the staff of the Joint Committee on Taxation states that section 506 requires "a plan administrator to provide an affected party with any information provided to PBGC in connection with the proposed plan termination." The broad reference to "any information * * * in connection with the proposed plan termination"—without the limitation to section 4041(a)(2)—suggests the required disclosures include information submitted to PBGC under section 4041(c)(2), in addition to the Form 600 filed pursuant to section 4041(a)(2) and the implementing regulation. Further, because a plan administrator files the Form 600 once, requiring disclosure of only the Form 600 would give no effect to the requirement in section 4041(c)(2)(D)(i)(II) that a plan administrator must provide copies of new information it submits to PBGC not later than 15 days after such submission.

In light of these considerations, the final regulation provides that, upon written request of an affected party, a plan administrator must provide copies of any information submitted to PBGC pursuant to sections 4041(a)(2) and

4041(c)(2) of ERISA and sections 4041.43 and 4041.45 of the regulation not later than 15 business days after receipt of the request. If PBGC Form 600 has not been filed with PBGC at the time of the request, the final regulation requires the plan administrator to provide the information not later than 15 business days after PBGC Form 600 is filed. In addition, the final regulation requires that if the plan administrator has provided information in response to a request and later submits additional information to PBGC in connection with the proposed distress termination, the plan administrator must, not later than 15 business days after the submission, provide copies of that information to any affected party that has made a previous request.

If a plan administrator fails to provide information under section 4041(c)(2)(D)(i) of ERISA and the implementing regulation within the specified timeframe, PBGC may assess penalties under section 4071 of ERISA.

Information To Be Disclosed by Plan Administrator and Plan Sponsor in a Termination Initiated by PBGC

Section 4042(c)(3) of ERISA imposes disclosure requirements on the plan administrator, the plan sponsor, and PBGC in connection with a PBGC-initiated termination. With regard to the plan sponsor and plan administrator, section 4042(c)(3)(A)(i) provides that, upon request:

A plan sponsor or plan administrator of a single-employer plan that has received a notice from [PBGC] of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in connection with the plan termination.

Under this provision, an affected party may request termination information only after the plan administrator has received a Notice of Determination from PBGC that the plan should be terminated. The final regulation adopts an assumed receipt date of three business days after PBGC issues the Notice of Determination. Thus, a request for information may be made on or after the third business day after the Notice of Determination is issued. Once such a request is received by the plan administrator or plan sponsor, the information must be provided not later than 15 business days after receipt of the request. As in the case of a distress termination, if new information relating to the request is submitted to PBGC, copies must be provided, not later than 15 business days after the submission, to any affected party that has made a previous request.

A plan administrator or plan sponsor that fails to provide information requested under section 4042(c)(3) of ERISA and the implementing regulation within the specified timeframe may be subject to penalties under section 4071 of ERISA.

Disclosure of Administrative Record by PBGC in Terminations Initiated by PBGC

Section 4042(c)(3)(A)(ii) of ERISA states that, upon request of an affected party, PBGC "shall provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan" not later than 15 days after receipt of the request. The right to request a copy of the administrative record arises only after a Notice of Determination that the plan should be terminated is received by the plan administrator. As in the provisions relating to requests for information from the plan administrator or plan sponsor, the final regulation adopts an assumed receipt date of 3 business days after PBGC issues the Notice of Determination. Thus, a request for the administrative record may be made on or after the third business day after the Notice of Determination is issued. The final regulation further provides that PBGC will send the administrative record to the affected party not later than 15 business days after it receives the request, and will use measures reasonably calculated to ensure actual receipt (including electronic measures). This standard is analogous to the requirements in Part 4000, subpart B, that the plan administrator and plan sponsor must follow.

Disclosure of Confidential Information by Plan Administrator and Plan Sponsor

Sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA prohibit the disclosure by the plan administrator, in connection with a distress termination, and the plan administrator or plan sponsor, in connection with a PBGC-initiated termination, of information "that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary." The final regulation incorporates this restriction.

In addition, both sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA provide a means for a plan sponsor or plan administrator to seek to restrict the disclosure of confidential information that would be exempt from disclosure under Freedom of Information Act ("FOIA"). Under section 552(b)(4) of FOIA, an agency has discretion to withhold documents on

matters that are “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Sections 4041(c)(2)(D)(ii)(II) and 4042(c)(3)(C)(ii) provide that a court may limit disclosure of confidential information described in section 552(b) of FOIA, 5 U.S.C. 552(b), to “authorized representatives * * * of the participants or beneficiaries that agree to ensure the confidentiality of such information.” Section 4041(c)(2)(D)(iv) defines “authorized representative” for purposes of both sections 4041 and 4042 as “any employee organization representing participants in the pension plan.” Accordingly, the final regulation provides that a plan administrator that has received a request for information in connection with a distress termination, and a plan administrator or plan sponsor that has received a request for information in connection with a PBGC-initiated termination, may seek a court order under which confidential information described in 5 U.S.C. 552(b) will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties.

Typically, the authorized representative will be a labor union in a plan maintained in conjunction with a collective bargaining agreement. However, there may be no authorized representative where the participants are not covered under a collective bargaining agreement. The new PPA 2006 provisions do not address limiting disclosure of confidential information in such cases.

One commenter suggested that the final rule recognize that a confidentiality agreement voluntarily entered into between the appropriate parties may be substituted for a court order. PBGC is not adopting this suggestion. With respect to requests to a plan administrator or plan sponsor, nothing in the final rule precludes a plan administrator or plan sponsor from entering into a confidentiality agreement with an affected party in lieu of obtaining a court order.

Disclosure of Confidential Information by PBGC

By its terms, section 4042(c)(3)(C)(i) of ERISA, which prohibits disclosure of information that identifies an individual participant or beneficiary, applies to a plan administrator or plan sponsor, but not to PBGC. This may be because PBGC is already prohibited from disclosing such information. Under the Privacy Act, 5 U.S.C. 552a, PBGC is prohibited

from disclosing personally identifiable information with regard to a participant or beneficiary, without the individual’s written consent. There are narrow exceptions stated in 5 U.S.C. 552a(b), but none apply to disclosure of identifying information that may be part of the administrative record in a PBGC-initiated termination. Accordingly, the final regulation states that PBGC shall not disclose any portions of the administrative record that it is prohibited from disclosing under 5 U.S.C. 552a.

With respect to disclosure of confidential information, PBGC believes that, under the provisions added by section 506 of PPA 2006, it must disclose any part of the administrative record that contains confidential information, except as limited by a court. Unlike FOIA, which specifies categories of information that are exempt from disclosure, there are no exemptions under section 4042(c)(3) of ERISA. Rather, disclosure may only be limited by a court to the extent provided in section 4042(c)(3)(C)(ii).

In addition, PBGC believes that the Trade Secrets Act, 18 U.S.C. 1805, does not apply to disclosure of the administrative record under section 4042(c)(3) of ERISA. The Trade Secrets Act prohibits disclosure of trade secrets and related information “to any extent not authorized by law.” PBGC believes that the disclosure requirements with respect to PBGC, as set forth in section 4042(c)(3), compel PBGC to disclose the administrative record upon request, subject only to limitation by a court as provided in section 4042(c)(3)(C)(ii). As a result, such disclosure is “authorized by law.”

Additionally, PBGC does not believe that information it receives under sections 4010 or 4043 of ERISA that becomes part of an administrative record is exempt from disclosure under section 4042(c)(3). Information and documents submitted to PBGC under those sections are “exempt from disclosure under [FOIA], and * * * may not be made public, except as may be relevant to any administrative or judicial action or proceeding.” 29 U.S.C. 1310(c), 1343(f). The exemption from disclosure under FOIA does not apply to disclosure of the administrative record because requests for the administrative record are made under section 4042(c)(3), not under FOIA. In addition, since material in the administrative record relates to an administrative action or proceeding, the restriction on making such material public does not apply.

To address the potential disclosure of confidential information that is part of

an administrative record, the final regulation provides that PBGC will promptly notify the plan administrator and plan sponsor upon receipt of a request for the administrative record from an affected party. PBGC expects that this notification will be made not later than the second business day after receipt of the request. Under the final regulation, the plan administrator or plan sponsor may then seek a court order under which disclosure of those portions of the administrative record that contain confidential information described in 5 U.S.C. 552(b) will be made only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties. The final regulation further provides that if PBGC receives such a court order prior to the 15th business day after PBGC receives a request for the administrative record, PBGC will disclose confidential information that is part of the administrative record only as provided in the order.

One commenter expressed concern that the confidentiality provisions do not extend to the administrative record provided by PBGC and that requiring a court order seems to be an unnecessary step. However, as explained above, the confidentiality provisions do extend to the administrative record, and the court order is required under the PPA 2006 amendment.

As noted above under Disclosure of Confidential Information by Plan Administrator and Plan Sponsor, PBGC is not adopting a commenter’s suggestion that the final rule recognize that a confidentiality agreement voluntarily entered into between the appropriate parties may be substituted for a court order. With respect to disclosure of an administrative record by PBGC, PBGC cannot rely on a confidentiality agreement between private parties to determine its statutory obligations to persons who are not parties to the agreement.

Applicability

The amendments in this final regulation are applicable to terminations initiated on or after August 17, 2006, but only to requests for information made on or after December 18, 2008.

Compliance With Rulemaking Guidelines

E.O. 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is not a

“significant regulatory action” under Executive Order 12866. PBGC identifies the following specific problems that warrant this agency action:

- The statute does not specify the form and manner in which information requested must be provided to the affected party, but instead states that PBGC may prescribe such requirements. Without rules for how the information is to be provided, plan administrators and plan sponsors will not know whether the method they choose for providing requested information is appropriate.

- There is uncertainty in the statute with respect to the information that a plan administrator that has filed a notice of intent to terminate a plan in a distress termination must provide, upon request, to an affected party. Without rules for what information is to be provided, plan administrators will not know what information they must provide, and affected parties will not know what information they are entitled to receive.

- There is uncertainty in the statute with respect to determining the date as of which an affected party may request information provided to PBGC in connection with a PBGC-initiated termination. Without clarification, affected parties will not know when they can begin to request information, and plan administrators, plan sponsors, and PBGC will not know when their obligation to provide information arises.

- Unlike FOIA, which specifies categories of information that are exempt from disclosure, section 4042(c)(3)(c)(ii) of ERISA provides only that a court may limit disclosure by PBGC of confidential information described in section 552(b) to an authorized representative. The statute does not specify when and by whom court limitation may be sought in cases where PBGC receives a request for the administrative record. Without clarification, plan administrators and plan sponsors will not know how disclosure of confidential information they submitted to PBGC can be limited.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the amendments in this final regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

The final rule implements statutory changes made by Congress. It prescribes the form and manner for providing

requested information and clarifies the type of information that must be provided and the timeframes for providing such information. It also provides for notification by PBGC to the plan sponsor and plan administrator of a request for an administrative record so that the plan sponsor or plan administrator can, if it chooses, seek a court order limiting disclosure of confidential information as provided in the statute. These provisions impose no significant burden beyond the burden imposed by statute.

Paperwork Reduction Act

The information collection requirements under this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212-0065; expires October 31, 2011). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This information is needed in order to provide sufficient information to affected parties about the termination or possible termination of their pension plans.

List of Subjects

29 CFR Part 4041

Disclosure, Pensions, Termination of pension plans.

29 CFR Part 4042

Disclosure, Pensions, Termination of pension plans.

■ For the reasons given above, 29 CFR chapter XL is amended as follows:

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 2. New § 4041.51 is added to read as follows:

§ 4041.51 Disclosure of information by plan administrator in distress termination.

(a) *Request for Information*—(1) *In general.* If a notice of intent to terminate under § 4041.43 is issued with respect to a plan, an affected party may make a request to the plan administrator for information submitted to PBGC under sections 4041(a)(2) and 4041(c)(2) of ERISA and §§ 4041.43 and 4041.45.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator;

(ii) State the name of the plan and that the request is for information submitted

to PBGC with respect to the application for a distress termination of the plan;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator*—(1) *Information.* The information that a plan administrator must provide in response to a request under paragraph (a) of this section includes PBGC Form 600, and any information submitted to PBGC pursuant to section 4041(c)(2) of ERISA and § 4041.45.

(2) *Timing of response.* A plan administrator that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(3) *Deferral of due date.* If, at the time the plan administrator receives a request under paragraph (a) of this section, the plan administrator has not filed a PBGC Form 600, the plan administrator must provide the information requested under paragraph (a) not later than the 15th business day (as defined in § 4000.22 of this chapter) after a PBGC Form 600 is filed with PBGC.

(4) *Supplemental responses.* If, at any time after the later of the receipt of a request under paragraph (a) of this section, or the filing of PBGC Form 600, the plan administrator submits additional information to PBGC with respect to the plan termination under section 4041(c)(2) of ERISA and § 4041.45, the plan administrator must, not later than the 15th business day (as defined in § 4000.22 of this chapter) after each additional submission, provide the additional information to any affected party that has made a request under paragraph (a) of this section.

(5) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary of the plan.

(ii) A plan administrator that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of

ERISA) that agree to ensure the confidentiality of such information, and,

(B) Will not be disclosed to other affected parties.

(6) *Reasonable fees.* Under section 4041(c)(2)(D)(iii)(II) of ERISA, a plan administrator may charge a reasonable fee for any information provided under this section in other than electronic form.

■ 3. New part 4042 is added to read as follows:

PART 4042—SINGLE-EMPLOYER PLAN TERMINATION INITIATED BY PBGC

Subpart A—General Provisions

Sec.

4042.1 Purpose and scope.

4042.2 Definitions.

4042.3 Issuance rules.

Subpart B—Reserved

Subpart C—Disclosure

4042.4 Disclosure of information by plan administrator or plan sponsor.

4042.5 Disclosure of administrative record by PBGC.

Authority: 29 U.S.C. 1302(b)(3), 1342.

Subpart A—General Provisions

§ 4042.1 Purpose and scope.

This part sets forth rules and procedures relating to single-employer plan terminations initiated by PBGC under section 4042 of ERISA.

§ 4042.2 Definitions.

The following terms used in this part are defined in § 4001.2 of this chapter: *Affected party*, *ERISA*, *PBGC*, and *plan administrator*.

§ 4042.3 Issuance rules.

PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

Subpart B—Reserved

Subpart C—Disclosure

§ 4042.4 Disclosure of information by plan administrator or plan sponsor.

(a) *Request for Information*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party may make a request to the plan sponsor or the plan administrator (or both) for any information that such plan administrator or plan sponsor has

submitted to PBGC in connection with the plan termination.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator or plan sponsor;

(ii) State the name of the plan and that the request is for information submitted to PBGC in connection with the plan termination;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator or Plan Sponsor*—(1) *Timing of response.*

A plan administrator or plan sponsor that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(2) *Supplemental responses.* If, at any time after receipt of a request under paragraph (a), the plan administrator or plan sponsor submits additional information to PBGC in connection with the plan termination, the plan administrator or plan sponsor must provide such additional information to any affected party that has made a request under paragraph (a), not later than the 15th business day (as defined in § 4000.22 of this chapter) after the information is submitted to PBGC.

(3) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator or plan sponsor shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary.

(ii) A plan administrator or plan sponsor that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree, to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(4) *Reasonable fees.* Under section 4042(c)(3)(D)(ii) of ERISA, a plan administrator or plan sponsor may charge a reasonable fee for any information provided under this section in other than electronic form.

§ 4042.5 Disclosure of administrative record by PBGC.

(a) *Request for Administrative Record*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an "Administrative Record Request."

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv)) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

Issued in Washington, DC, this 13 day of November, 2008.

Charles E.F. Millard,
Director, Pension Benefit Guaranty Corporation.

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

Judith R. Starr,
Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS Number NM-047-FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the New Mexico regulatory program (the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico is proposing additions to and revisions of the New Mexico Administrative Code (NMAC) to improve and clarify the public notification process during permitting actions, to correct outdated citations, and to comply with formatting requirements for New Mexico

administrative law. The revisions also include non-substantive editorial changes. New Mexico revised its program to provide additional safeguards, clarify ambiguities, and achieve stylistic consistency.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Bob Postle, Branch Chief, Field Operations, Program Support Division; *Telephone:* (505) 248-5070; *Internet address:* bpostle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (a)(7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated November 28, 2007, New Mexico sent us an amendment to its program (SATS number NM-047-FOR; Administrative Record No. OSM-2007-0021-0002) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the January 11, 2008, **Federal Register** (73 FR 1983). In the same document, we opened the public comment period and provided an

opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM-2007-0021-0002). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 11, 2008. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, grammatical, citation, stylistic, and recodification changes to the following previously approved rules at NMAC:

- 19.8.1.7.B(1); G(1); N, and R(3)—Definitions
- 19.8.2.201.B.(2)(a)—Areas Where Mining Is Prohibited or Limited
- 19.8.2.202.F—Procedures/Review by Other Agencies
- 19.8.4.401.A and B—Procedures: Initial Processing, Record-Keeping, and Notification Requirements
- 19.8.4.402.B—Procedures: Hearing Requirements
- 19.8.5.504.B—Permit Application Filing Deadlines
- 19.8.6.601.F—General Requirements: Exploration of Less Than 250 Tons
- 19.8.6.603.B(2)—Applications: Approval or Disapproval of Exploration of More Than 250 Tons
- 19.8.6.606.B—Public Availability of Information
- 19.8.7.705.A—Permit Term Information
- 19.8.7.708—Identification of Location of Public Office for Filing of Application
- 19.8.8.801.B—General Environmental Resources Information
- 19.8.8.803.B—Geology Description
- 19.8.8.814.A, B(5), D, and D(2)—Prime Farmland Investigation
- 19.8.9.901.B(1) and B(3)—Operation Plan: Existing Structures
- 19.8.9.903.B(3)—Operation Plan: Maps and Plans
- 19.8.9.906.B(2)—Reclamation Plan: General Requirements
- 19.8.9.907.B(1)—Reclamation Plan: Protection of Hydrologic Balance
- 19.8.9.909.A(2)—Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
- 19.8.9.913—Relocation or Use of Public Roads
- 19.8.9.916—Transportation Facilities