

financial accounting purposes but are treated as leases for Federal income tax purposes.

(3) *Examples 1 through 5* [Reserved]. For further guidance, see § 1.954-2(c)(3) *Examples 1 through 5*.

*Example 6.* The facts are the same as in *Example 2*, except that controlled foreign corporation D purchases aircraft which it leases to others. If Corporation D incurs active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal to or in excess of 10 percent of its adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section, the rental income of Corporation D from its leases with the unrelated foreign corporations is substantial and will be considered as derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A). If a particular aircraft subject to lease was not used by the lessee corporation in foreign commerce, for example, because 50 percent or less of the miles during the taxable year were traversed outside the United States and the aircraft was located in the United States for 50 percent or more of the taxable year, Corporation D is not prevented from otherwise showing that it actively carries on a trade or business with regard to the rents derived from that aircraft, for example, based on its facts and circumstances, or as within the meaning of paragraph (c)(1)(i) or (iii) of this section.

(d) through (h) [Reserved]. For further guidance, see § 1.954-2(d) through (h).

(i)(1) *Effective/applicability date.* Paragraph (c) of this section applies to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations ends. Taxpayers may elect to apply paragraph (c) of this section to taxable years of controlled foreign corporations beginning after December 31, 2004, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations end. If an election is made to apply paragraph (b)(1)(vi) of this section to taxable years beginning after December 31, 2004, then the election must also be made for paragraph (c) of this section.

(2) *Expiration date.* The applicability of § 1.954-2T(c) will expire on July 1, 2011.

■ **Par. 7.** Section 1.956-2 is amended as follows:

- 1. Paragraph (b)(1)(vi) is revised.
- 2. Paragraph (e) is added.

The revisions and addition read as follows:

**§ 1.956-2 Definition of United States property.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) [Reserved]. For further guidance, see § 1.956-2T(b)(1)(vi).

\* \* \* \* \*

(e) [Reserved]. For further guidance, see § 1.956-2T(e).

■ **Par. 8.** Section 1.956-2T is amended as follows:

- 1. Paragraphs (a), (b), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(i)(vi), (c), (d) and (d)(1) are added.
- 2. Paragraph (e) is added.

The revisions and addition read as follows:

**§ 1.956-2T Definition of United States property (temporary).**

(a) through (b)(1)(v) [Reserved]. For further guidance, see § 1.956-2(a) through (b)(1)(v).

(vi) Any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States. Whether transportation property described in this subdivision is used in foreign commerce and predominantly outside the United States is to be determined from all the facts and circumstances of each case. As a general rule, such transportation property will be considered to be used predominantly outside the United States if 70 percent or more of the miles traversed (during the taxable year at the close of which a determination is made under section 956(a)(2)) in the use of such property are traversed outside the United States or if such property is located outside the United States 70 percent of the time during such taxable year. Notwithstanding the above, an aircraft or vessel (as the term is defined in § 1.954-2T(c)(2)(ii)) is excluded from U.S. property if rents derived from leasing such aircraft or vessel are excluded from foreign personal holding company income under section 954(c)(2)(A). See paragraph (e) of this section for the effective/applicability dates of this paragraph (b)(1)(vi).

(c) through (d)(1) [Reserved]. For further guidance, see § 1.956-2(b)(1)(vii) through (d)(1).

\* \* \* \* \*

(e) *Effective/applicability date.* Paragraph (b)(1)(vi) of this section applies to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations end. Taxpayers may elect to apply the rule of this section to taxable years of controlled foreign corporations beginning after December 31, 2004, and

for tax years of United States shareholders with or within which such tax years of foreign corporations end. If an election is made to apply § 1.954-2T(c) to taxable years of a controlled foreign corporation beginning after December 31, 2004, then the election must also be made for paragraph (b)(1)(vi) of this section.

(2) *Expiration date.* The applicability of paragraph (b)(1)(vi) of this section will expire on July 1, 2011.

Approved: June 23, 2008.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E8-14919 Filed 7-2-08; 8:45 am]

BILLING CODE 4830-01-P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4003

RIN 1212-AB15

### Rules for Administrative Review of Agency Decisions

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** Pension Benefit Guaranty Corporation (PBGC) is amending its regulation on Administrative Review of Agency Decisions to clarify that the agency's Appeals Board may refer certain categories of appeals to other PBGC departments for a written response and to remove determinations under section 4022A of the Employee Retirement Income Security Act of 1974 (ERISA) from the scope of part 4003. The amendments also include minor clarifying and technical changes to the rules for administrative review of agency decisions.

**DATES:** Effective August 4, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Joseph J. Shelton, Attorney, Office of the General Counsel or Catherine B. 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:** On October 18, 2007, PBGC published (at 72 FR 59050) a proposed rule to amend

PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003) to clarify that the agency's Appeals Board may refer certain categories of appeals to other PBGC departments for a written response, remove determinations under section 4022A of ERISA from the scope of part 4003, and make minor clarifying and technical changes to the rules for administrative review of agency decisions. PBGC received no public comments on the proposed rule and is finalizing the regulation as proposed.

## Background

### *Current Rules for Administrative Review of Agency Decisions*

PBGC administers the pension plan termination insurance program under Title IV of ERISA. Under PBGC's regulation for Administrative Review of Agency Decisions, persons aggrieved by certain PBGC determinations may appeal to the agency's Appeals Board. 29 CFR part 4003.

The powers of the Appeals Board are set forth in, among other places, § 4003.58 of the regulations. It states that "the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it." 29 CFR 4003.58. The decision of the Appeals Board constitutes final agency action by PBGC with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal. 29 CFR 4003.59(b).

The Appeals Board reviews the following categories of determinations:

- Determinations that a plan is not covered under section 4021 of ERISA;
- Determinations under section 4022(a) or (c) or section 4022A(a) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Internal Revenue Code;
- Determinations under section 4022(b) or (c), section 4022A(b) through (e), or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans;
- Determinations of the amount of money subject to recapture under section 4045 of ERISA;
- Determinations of the amount of liability under section 4062(b)(1),

section 4063, or section 4064 of ERISA; and

- Determinations that the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of ERISA has been correctly computed based on the designated benefit paid to PBGC under section 4050(b)(2) of ERISA, or that the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit. 29 CFR 4003.1(b)(5) through (b)(10). Additionally, nothing in part 4003 limits the authority of PBGC to review, either upon request or on its own initiative, a determination to which part 4003 does not apply when, in its discretion, it determines that it would be appropriate to do so. 29 CFR 4003.1(c)(1).

A person who is adversely affected by a determination involving any of the matters listed above has not exhausted his or her administrative remedies, and thus may not challenge the determination in court, until he or she has filed an appeal under § 4003.51 and a decision granting or denying the relief requested has been issued by the Appeals Board. 29 CFR 4003.7. An appeal must be filed within 45 days after the date of the determination being appealed, unless the appellant requests an extension of time to file within the 45-day period and the request is granted. 29 CFR 4003.52, 4003.4, 4003.5.

An appeal must be in writing, be clearly designated as an appeal, contain a statement of the ground on which it is based and the relief sought, reference all pertinent information already in the possession of PBGC, and include any additional information or data that the appellant believes is relevant. 29 CFR 4003.54. The filing of an appeal generally stays the effectiveness of a determination until a decision on the appeal has been issued by the Appeals Board. 29 CFR 4003.22(a), (b).

### *Appeals Board's Current Practice of Referring Certain Appeals to Other PBGC Departments*

This final regulation formalizes the Appeals Board's practice of referring certain routine appeals, such as those that allege a mistake of fact or that request a more detailed benefit explanation, to other PBGC departments or Appeals Board staff for a written response. The practice began after the agency concluded that other PBGC departments, such as the Benefits Administration and Payment Department (BAPD), could handle these types of appeals efficiently given their familiarity with the relevant facts

underlying the initial benefit determinations.

At the same time, the agency concluded that it would be appropriate for Appeals Board staff (rather than the Appeals Board) to respond to untimely and premature appeals, as well as appeals alleging that benefit reductions required by law will work a financial hardship. Appeals Board staff provide support to the Appeals Board in the areas of receipt, review, and closing of appeals and other correspondence. Appeals Board staff also analyze incoming correspondence to determine whether it should be addressed by the Appeals Board as an appeal, referred to another PBGC department, such as BAPD, or retained by Appeals Board staff for response as an inquiry, extension request, or a request for additional information.

In 2006, approximately 35% of the appeals received by the Appeals Board involved simple factual disputes, or requested only a more detailed explanation of a benefit determination. These appeals were referred to other PBGC departments for a response and were answered, on average, within 45 days. In situations where PBGC's initial determination is incorrect, BAPD can quickly resolve the matter, without the need for an Appeals Board decision, by issuing a corrected benefit determination. Similarly, if an appellant only requests—in the form of an appeal—a more detailed explanation of his or her initial benefit determination, BAPD can quickly provide a detailed explanation given its familiarity with the initial determination and the relevant participant data.

Under current practice, when an appeal is referred to another PBGC department or Appeals Board staff for a written response, the time period for filing a request for Appeals Board review is extended for an additional 30 days from the date of the written response. As discussed more fully below, under the final regulation, the time period for filing a request for Appeals Board review will be extended for an additional 45 days from the date of the PBGC department's or Appeals Board staff's written response.

## Summary of Amendments

### *Powers of the Appeals Board*

The regulation amends § 4003.58 of the regulations to clarify that the Appeals Board may refer certain appeals to other PBGC departments or Appeals Board staff for a response. Appeals that will be subject to referral include those that (1) request an explanation of a covered initial benefit determination, (2)

dispute specific data used in a covered initial determination, such as date of hire, date of retirement, date of termination of employment, length of service, compensation, marital status, and the form of benefit elected; or (3) request an explanation of the limits on benefits payable by PBGC under part 4022, subpart B, such as the maximum guaranteeable benefit and phase-in.

The PBGC department's or Appeals Board staff's response will be in writing and address the matters raised in the appeal. Alternatively, appeals referred to BAPD may be answered in the form of a corrected benefit determination. The written response or corrected benefit determination will provide that the appellant may file a written request for review by the Appeals Board within 45 days of the date of the written response or corrected benefit determination. If a written request for review is not filed with the Appeals Board within 45 days, the Appeals Board will not review the case and the initial determination or corrected benefit determination will become effective under § 4003.22(a).

A written response or corrected benefit determination will not be a decision of the Appeals Board within the meaning of § 4003.59 of the regulations. Thus, a person who is issued such a response or corrected benefit determination will not have exhausted his or her administrative remedies under § 4003.7 of the regulations unless and until he or she files a request for review by the Appeals Board and a decision granting or denying the relief requested has been issued.

#### *Removal of Determinations Under ERISA Section 4022A*

Under PBGC's multiemployer program, when a plan becomes insolvent, PBGC provides financial assistance to the plan sufficient to pay guaranteed benefits to participants and administrative expenses. Section 4022A of ERISA sets forth PBGC's guarantee for multiemployer pension plan benefits. A multiemployer plan is considered insolvent if the plan is unable to pay benefits (at least equal to PBGC's guaranteed benefit limit) when due. The plan must repay this financial assistance in accordance with terms and conditions specified by PBGC.

Unlike the situation with single-employer plans, however, PBGC does not trustee or otherwise assume responsibility for the liabilities of a financially troubled multiemployer plan. As a result, PBGC does not issue determinations under section 4022A of ERISA with respect to benefit

entitlement of participants and beneficiaries. Accordingly, PBGC is amending § 4003.1(b)(6) and (7) to remove the reference to section 4022A. The effect of this amendment will be to remove determinations under section 4022A from the scope of part 4003.

#### *Contents of Appeal*

Section 4003.54(3) and (4) of the regulation are amended to reflect the plain language used in the "Your Right to Appeal" brochure that currently accompanies all benefit determinations and is available on PBGC's Web site, <http://www.pbgc.gov>.

Section 4003.54(3) states that an appeal shall "[c]ontain a statement of the grounds upon which it is brought and the relief sought." Addressing the same requirement, the brochure states that an appeal must "[s]pecifically explain why PBGC's determination is wrong and the result you are seeking." The regulation replaces the language in § 4003.54(3) with language similar to that which is currently used in the brochure.

PBGC is also amending § 4003.54(4) of the regulation, which states that an appeal shall "[r]eference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant." Addressing the same requirement, the "Your Right to Appeal" brochure states, in part, that an appeal must "[d]escribe the relevant information you believe is known by PBGC and include copies of documents that provide additional information that the Appeals Board should consider." The final regulation replaces the language in § 4003.54(4) with language similar to that which is currently used in the brochure.

#### *Where To File*

PBGC is amending § 4003.53 of the regulations, which provides information on where to file an appeal, to remove the filing address for appeals and requests for filing extensions because it is no longer accurate. In its place, PBGC is incorporating § 4000.4, which provides general instructions on where to file submissions to PBGC.

#### *Replacing the Term "Executive Director" With "Director" in Part 4003*

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Public Law 109-280 ("PPA 2006"). Section 411 of PPA 2006 amended section 4002(a) of ERISA to state that PBGC shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. Thus, PBGC is replacing all references to the term

"Executive Director" in part 4003 with the term "Director." See §§ 4003.2 (Definitions), 4003.4 (Extension of time); 4003.33 (Where to submit request for reconsideration), 4003.35 (Final decision on request for reconsideration); and 4003.60 (Referral of appeal to the Executive Director).

#### **Applicability**

The amendments in this final rule are applicable to appeals filed on or after the effective date of the final rule.

#### **Compliance With Rulemaking Guidelines**

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by Executive Order 13422), PBGC has determined that regulatory action is required in this area. Principally, this regulatory action is necessary to update PBGC's rules for administrative review of agency decisions to accurately reflect the agency's appeals handling procedures. In addition, because PBGC does not issue determinations under section 4022A of ERISA with respect to benefit entitlement of participants and beneficiaries, the final rule removes determinations under section 4022A of ERISA from the scope of part 4003. Finally, the final rule contains minor clarifying and technical changes to the rules for administrative review of agency decisions that will streamline the appeals process and make the rules governing administrative appeals easier to understand.

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment and delayed effective date requirements of section 553 of the Administrative Procedure Act. Because no general notice of proposed rulemaking was required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, and 604. (Because the PBGC wished to provide an opportunity for public comment, the PBGC published a proposed rule).

PBGC has determined that these changes do not modify the information collection requirements under Administrative Appeals (OMB control number 1212-0061, expires 1/31/10).

#### **List of Subjects in 29 CFR Part 4003**

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

■ For the reasons given above, PBGC is amending 29 CFR part 4003 as follows:

## PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

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

### § 4003.1 [Amended]

■ 2. In § 4003.1:

■ a. Paragraph (b)(6) is amended by removing the words “or section 4022A(a)”.

■ b. Paragraph (b)(7) is amended by removing the words “(c), section 4022A(b) through (e), or” and adding in their place the words “(c) or”.

### § 4003.2 [Amended]

■ 3. In § 4003.2:

■ a. The definition of *Appeals Board* is amended by removing the word “Executive”.

■ b. The definition of *Director* is amended by removing the word “Executive” each place it appears in the definition.

### § 4003.4 [Amended]

■ 4. In § 4003.4, paragraph (b) introductory text is amended by removing the word “Executive”.

### § 4003.33 [Amended]

■ 5. Section 4003.33 is amended by removing the word “Executive”.

### § 4003.35 [Amended]

■ 6. In § 4003.35, paragraph (a)(2) is amended by removing the word “Executive” each place it appears in the paragraph.

### § 4003.53 [Amended]

■ 7. Section 4003.53 is amended by removing the words “Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 2005–4026” and adding in their place the words “Appeals Board”.

■ 8. In § 4003.54, paragraphs (a)(3) and (a)(4) are revised to read as follows:

### § 4003.54 Contents of appeal.

(a) \* \* \*

\* \* \* \* \*

(3) Specifically explain why PBGC’s determination is wrong and the result the appellant is seeking;

(4) Describe the relevant information the appellant believes is known by PBGC, and summarize any other information the appellant believes is relevant. It is important to include copies of any documentation that support the appellant’s claim or the appellant’s assertions about this information;

\* \* \* \* \*

■ 9. In § 4003.58:

■ a. The existing text of the section is redesignated as paragraph (a).

■ b. A new paragraph (b) is added to read as follows:

### § 4003.58 Powers of the Appeals Board.

\* \* \* \* \*

(b) The Appeals Board may refer certain appeals to another PBGC department or to Appeals Board staff to provide a response to the appellant. The response from another PBGC department or Board staff shall be in writing and address the matters raised in the appeal. The response may be in the form of an explanation or corrected benefit determination. In either case, the appellant will have 45 calendar-days from the date of the response to file a written request for review by the Appeals Board. If a written request for review is not filed with the Appeals Board within the 45-calendar-day period the determination shall become effective pursuant to § 4003.22(a).

(1) Appeals that may be referred to another PBGC department or to the Board staff include those that—

(i) Request an explanation of the initial determination being appealed;

(ii) Dispute specific data used in the determination, such as date of hire, date of retirement, date of termination of employment, length of service, compensation, marital status and form of benefit elected; or

(iii) Request an explanation of the limits on benefits payable by PBGC under Part 4022, Subpart B, such as the maximum guaranteeable benefit and phase-in of the PBGC guarantee.

(2) An explanation or corrected benefit determination issued under this subsection is not considered a decision of the Appeals Board. If an appellant aggrieved by PBGC’s initial determination is issued an explanation or corrected benefit determination under this section, the appellant has not exhausted his or her administrative remedies until the appellant has filed a timely request with the Appeals Board for review and the Appeals Board has issued a decision granting or denying the relief requested. See § 4003.7 of this part.

■ 10. In § 4003.60:

■ a. The section heading is amended by removing the word “Executive”.

■ b. The text of the section is amended by removing the word “Executive” each place it appears.

Issued in Washington, DC, this 29th day of April, 2008.

**Elaine L. Chao,**

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

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

**Judith R. Starr,**

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

[FR Doc. E8–15196 Filed 7–2–08; 8:45 am]

BILLING CODE 7709–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG–2008–0539]

RIN 1625–AA00

### Security Zone; Thea Foss Waterway, Tacoma, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The U.S. Coast Guard is establishing a temporary security zone in the Thea Foss Waterway, Tacoma, Washington during a reception at the Museum of Glass. This security zone is necessary to ensure the safety of dignitaries while attending the reception. Entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

**DATES:** This rule is effective from 6 p.m. (PDT) to 11:59 p.m. (PDT) on July 3, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0539 and are available for inspection or copying at USCG Sector Seattle, Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning this rule, call Ensign Heidi A. Bevis, Waterways Management Division, U.S. Coast Guard Sector Seattle, at 206–217–6147.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing