

- (1) The name and address of the property;
- (2) A legal description of the property;
- (3) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices;
- (4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and
- (5) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of the property's ownership.

(b) A tribe does not need to submit to the Chairman a notice that a facility license is under consideration for issuance for occasional charitable events lasting not more than a week.

§ 559.3 How often must a facility license be renewed?

At least once every three years, a tribe shall issue a separate facility license to each existing place, facility or location on Indian lands where a tribe elects to allow gaming.

§ 559.4 When must a tribe submit a copy of a facility license to the Chairman?

A tribe must submit to the Chairman a copy of each issued facility license within 30 days of issuance.

§ 559.5 What must a tribe submit to the Chairman with the copy of each facility license that has been issued?

(a) A tribe shall submit to the Chairman with each facility license an attestation certifying that by issuing the facility license:

(1) The tribe has identified the environmental and public health and safety laws applicable to its gaming operation;

(2) The tribe is in compliance with those laws; and

(3) The tribe has ensured and is ensuring that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

(b) A document listing all laws, resolutions, codes, policies or procedures identified by the tribe as applicable to its gaming operations, other than Federal laws, in the following areas:

- (1) Emergency preparedness, including but not limited to fire suppression, law enforcement, and security;
- (2) Food and potable water;
- (3) Construction and maintenance;
- (4) Hazardous materials;
- (5) Sanitation (both solid waste and wastewater); and

(6) Other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming facilities, places or locations.

(c) After the first submission of a document under paragraph (b) of this section, upon reissuing a license to an existing gaming place, facility, or location, and in lieu of complying with paragraph (b) of this section, a tribe may certify to the Chairman that it has not substantially modified its laws protecting the environment and public health and safety.

§ 559.6 Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes?

A tribe must notify the Chairman within 30 days if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens.

§ 559.7 May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?

A tribe shall provide Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request as needed.

§ 559.8 May a tribe submit documents required by this part electronically?

Yes. Tribes wishing to submit documents electronically should contact the Commission for guidance on acceptable document formats and means of transmission.

PART 573—ENFORCEMENT

7. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

8. Amend § 573.6 by revising paragraph (a)(4) to read as follows:

§ 573.6 Order of temporary closure.

(a) * * *

(4) A gaming operation operates for business without a license from a tribe, in violation of part 522 or part 559 of this chapter.

* * * * *

Dated: October 11, 2007.

Philip N. Hogen,
Chairman.

Cloyce V. Choney,
Commissioner.

Norman H. DesRosiers,
Commissioner.

[FR Doc. E7-20541 Filed 10-17-07; 8:45 am]

BILLING CODE 7565-01-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: Proposed rule.

SUMMARY: Pension Benefit Guaranty Corporation (PBGC) proposes amending its 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 and to remove determinations under section 4022A of the Employee Retirement Income Security Act of 1974 (ERISA) from the scope of part 4003. The proposed amendments also include minor clarifying and technical changes to the rules for administrative review of agency decisions.

DATES: Comments must be submitted on or before December 17, 2007.

ADDRESSES: Comments, identified by Regulatory Information Number (RIN) 1212-AB15, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *E-mail:* reg.comments@pbgc.gov.
- *Fax:* 202-326-4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

All submissions must include the Regulatory Information Number for this rulemaking (1212-AB15). Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or

calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

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:

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 proposed 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 proposed regulation, the time period for filing a request for Appeals Board review would be extended for an additional 45 days from the date of the PBGC department's or Appeals Board staff's written response.

Summary of Proposed Amendments

Powers of the Appeals Board

The proposed regulation would amend § 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 would 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 would be in writing and address the matters raised in the appeal. Alternatively, appeals referred to BAPD could be answered in the form of a corrected benefit determination. The written response or corrected benefit determination would 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 would not review the case and the initial determination or corrected benefit determination would become effective under § 4003.22(a).

A written response or corrected benefit determination would 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 would 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 proposes to amend § 4003.1(b)(6) and (7) to remove the reference to section 4022A. The effect of this amendment would be to remove determinations under section 4022A from the scope of part 4003.

Contents of Appeal

Under this proposal, § 4003.54(3) and (4) of the regulation would be 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 proposed regulation would replace the language in § 4003.54(3) with language similar to that which is currently used in the brochure.

PBGC also proposes to amend § 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 proposed regulation would replace the language in § 4003.54(4) with language similar to that which is currently used in the brochure.

Where To File

PBGC proposes to amend § 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 would incorporate § 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, Pub. L. 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 proposes to replace 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 proposed rule would be 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 proposed rule would remove determinations under section 4022A of ERISA from the scope of part 4003. Finally, the proposed 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 is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, and 604. However, because the PBGC wishes to provide an opportunity for public

comment, this rule is being published as a proposed rule.

PBGC has determined that these proposed 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 proposes to amend 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).

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”.

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” where it appears twice in the definition.

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

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

6. In § 4033.35, paragraph (a)(2) is amended by removing the word “Executive” where it appears twice in the paragraph.

7. Section 4003.53 is amended by removing the words “Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026” 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” wherever it appears.

Issued in Washington, DC, this 12th day of October 2007.

Charles E. F. Millard,

Interim Director, Pension Benefit Guaranty Corporation.

[FR Doc. E7-20538 Filed 10-17-07; 8:45 am]

BILLING CODE 7709-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 217

[DOD-2007-OS-0001; 0790-AI19]

Service Academies

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to revise and update policy guidance and oversight of the Military Service Academies. This proposed rule implements 10 U.S.C. 403, 603, and 903 for the establishment and operation of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

DATES: Comments must be received by December 17, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Brenda Leong, Office of the Under Secretary of Defense (Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301-4000 (telephone: (703) 695-5529).

SUPPLEMENTARY INFORMATION:

In accordance with the guidance in the Deputy Secretary of Defense memorandum, “DoD Directives Review—Phase II,” July 2005, this document proposes to revise the existing part and incorporates two other