may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 15, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09643 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AB32

Payment of Premiums; Late Payment Penalty Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) proposes to lower the rates of penalty charged for late payment of premiums by all plans, and to provide a waiver of most of the penalty for plans with a demonstrated commitment to premium compliance. PBGC seeks public comment on its proposal.

DATES: Comments must be submitted on or before June 27, 2016.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB32, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4112.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB32). Comments received, including personal information provided, will be posted to *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: Deborah C. Murphy, Deputy Assistant General Counsel for Regulatory Affairs (*murphy.deborah@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is needed to reduce the financial burden of PBGC's late premium penalties. The rulemaking would reduce penalty rates for all plans and waive most of the penalty for plans that meet a standard for good compliance with premium requirements.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to assess late payment penalties.

Major Provisions of the Regulatory Action

The penalty for late payment of a premium is a percentage of the amount paid late multiplied by the number of full or partial months the amount is late, subject to a floor of $25 (or the amount of premium paid late, if less). There are currently two levels of penalty: 1 Percent per month (with a 50 percent cap) and 5 percent per month (capped at 100 percent). The lower rate applies to ''self-correction''—that is, where the premium underpayment is corrected before PBGC gives notice that there is or may be an underpayment. This proposed rule would cut the rates and caps in half (to ½ percent with a 25 percent cap and 2½ percent with a 50 percent cap, respectively) and eliminate the floor.

The rulemaking would also create a new penalty waiver that would apply to underpayments by plans with good compliance histories if corrected promptly after notice from PBGC. Under the proposal, PBGC would waive 80 percent of the penalty otherwise applicable to such a plan. Thus, the penalty would be reduced from 2½ percent per month (with a 50 percent cap) to ½ percent per month (with a 25 percent cap)—the same result as if the plan had self-corrected.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by title IV must pay premiums to PBGC. PBGC's premium regulations—on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007)—implement ERISA sections 4006 and 4007.

ERISA section 4007(b)(1) provides that if a premium is not paid when due, PBGC is authorized to assess a penalty up to 100 percent of the overdue amount. The statute does not condition exercise of this authority on a finding of bad faith or lack of due care; it is solely based on the failure to pay.[1] However, the fact that assessment is authorized (rather than mandated)—and thus that PBGC could choose not to exercise the authority at all—indicates that PBGC has the flexibility to assess less than the full amount of penalty authorized and to reduce or eliminate a penalty.[2]

PBGC has provided for the exercise of its authority to impose penalties in the premium payment regulation. Under § 4007.8 of the regulation, late payment penalties accrue at the rate of 1 percent or 5 percent per month (or portion of a month) of the unpaid amount, except that the smallest penalty assessed is the lesser of $25 or the amount of unpaid premium. Whether the 1-percent or 5-percent rate applies depends on whether the underpayment is ''self-corrected'' or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. One-percent penalties are capped by the regulation at 50 percent and 5-percent penalties at 100 percent of the unpaid amount. Thus, although penalties can be significant in some cases, they are generally assessed in amounts far less than the statutory maximum.

This two-tiered structure provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more forbearance than those that PBGC identifies through its premium enforcement programs.

[1] The statute provides a waiver of penalty for 60 days if PBGC finds that timely payment would cause substantial hardship, but PBGC may not grant the waiver if it appears that the plan will be unable to pay the premium within 60 days. PBGC has found no record that such a waiver has ever been granted during the agency's 40+ years of existence.

[2] In contrast, the statute requires that interest on late premiums ''shall be paid'' at a specified rate for the overdue period.

The premium payment regulation and its appendix also authorize waivers of late premium payment penalties. For example, § 4007.8(f) provides an automatic waiver for cases where premiums are not more than seven days late. The regulation and appendix also provide for waivers based on facts and circumstances and give detailed guidance about some specific grounds for waivers, such as where there is reasonable cause for the late payment.[3] PBGC may also waive penalties where it finds that there are other appropriate circumstances.[4]

Proposal

PBGC proposes to reduce penalty rates for late payment of annual (flat- and variable-rate) premiums and create a new automatic waiver of 80 percent of the higher penalty rate for plans that demonstrate good compliance.[5] These changes would in effect make the penalty rate for these compliant plans the same as the lower ''self-correction'' penalty rate. (PBGC also proposes to make two minor wording changes in the premium payment regulation.) PBGC seeks public comment on its proposal.

Penalty Rates

Over the years—especially in recent years—Congress has significantly increased PBGC premium rates. Since late payment penalties are a percentage of unpaid premium, the penalties have gone up in proportion to the increase in premiums. While it is not unfair to impose larger penalties for late payment of larger amounts, PBGC is sensitive to the fact that a penalty assessed today may be several times what would have been assessed years ago for the same acts or omissions involving a plan with the same number of participants and the same unfunded vested benefits.

PBGC has good reason to believe that smaller penalties will provide an adequate incentive for compliance by premium payers. PBGC's experience has been that compliance with the premium payment requirements is influenced primarily by the consistency of PBGC's penalty assessment activities, and only secondarily by the size of penalties assessed. PBGC observes that in most cases, a late payment is inadvertent and that assessment of a penalty sparks improvement of a plan's compliance systems whether the penalty is large or small. This experience supports the conclusion that if PBGC continues its current consistent enforcement efforts, assessing significantly lower penalties will yield a satisfactory level of compliance.

Accordingly, PBGC is proposing to cut penalty rates and caps in half, so that the lower (self-correction) rate would be ½ percent with a 25 percent cap, and the higher rate would be 2½ percent with a 50 percent cap. PBGC also proposes to eliminate the floor on penalty assessments, so that if the penalty assessment formula generates a penalty less than $25, it will not be automatically inflated to the floor amount.

Partial Waiver for Good Premium Compliance

Applying a lower penalty rate to self-correction recognizes that it is desirable for a plan to catch and fix its own mistakes, whatever its compliance history may be. PBGC has given this matter further thought and concluded that a demonstrated commitment to premium compliance is also worthy of recognition, even if a plan corrects an underpayment (of which it is likely unaware) only after notice from PBGC. PBGC believes such a commitment is evidenced where a plan has a history of consistent compliance and acts promptly to correct an underpayment when notified by PBGC. PBGC therefore proposes to automatically waive 80 percent of penalties assessed at the higher (2½-percent) rate where the following two conditions are satisfied.

The first condition would be that the plan have a five-year record of premium compliance. Generally, this would mean timely payment of all premiums for the five plan years preceding the year of the delinquency, as shown by the plan's premium filings. However, a late payment would not count against a plan if PBGC did not require payment of a penalty, such as where there was a waiver of the entire penalty. A plan that was not in existence as a covered plan for the full five years would be judged on its coverage years.

The second condition would be prompt correction. This would mean that the premium shortfall for which a penalty was being assessed was made good within 30 days after PBGC notified the plan in writing that there was or might be a problem. In other words, a plan that met the first condition would be assessed penalty at the normally applicable rate, but it could earn an 80-percent waiver (that is, a waiver of all penalty above the lower ''self-correction'' rate) by paying the premium shortfall within 30 days.

Effect of Proposed Changes

PBGC typically discovers the most common premium payment errors fairly quickly—errors like failing to pay, sending payment that doesn't match the information filed, and so forth—and generally notifies plans of their delinquencies within a month or two after the due date. Thus, a plan that corrects an underpayment before or promptly after notice from PBGC typically owes no more than a few months' penalty.

For example, if a plan paid a $1 million premium two months late (after notice from PBGC), the penalty under the current regulation would be $100,000 (two months times 5 percent times $1 million). Under the proposed regulation, the penalty would be $50,000 (two months times 2½ percent times $1 million). If the plan qualified for the compliant plan partial waiver, the penalty would be reduced by 80 percent, from $50,000 to $10,000.

The effect of the proposed changes is summarized in the following table.

Good compliance history?	Monthly penalty rate if shortfall is corrected—		
	At or before date of PBGC notice	Within 30 days after PBGC notice	More than 30 days after PBGC notice
No	½ percent	2½ percent	2½ percent.
Yes	½ percent	½ percent (after waiver)	2½ percent.

[3] Section 22(a) of the appendix to the premium payment regulation says that there is reasonable cause for failure to pay a premium timely if the failure arises from circumstances beyond the payer's control and the payer could not avoid the failure by the exercise of ordinary business care and prudence. Examples are provided in sections 24 and 25 of the appendix: Sudden and unexpected absence of a responsible individual, loss of records in a casualty or disaster, erroneous PBGC advice, and inability to get necessary information.

[4] See section 21(b)(5) of the appendix to the premium payment regulation.

[5] The proposal would not affect penalties for late payment of the termination premium under § 4007.13 of the premium payment regulation.

Applicability

PBGC proposes to apply the changes described above to late premium payments for plan years beginning after 2015.

Compliance With Regulatory Requirements

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is not a ''significant regulatory action'' under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

PBGC would not expect this proposed rule to cause a significant change in premium compliance patterns. As noted above, PBGC's experience is that prompt assessment, rather than amount, is the key to using penalties as a compliance tool. A reduction in the penalty cost of late payment is unlikely to reduce the incidence of late payment, but is also unlikely to encourage late payment: No penalty is better than a low penalty. Thus, the primary effect of the proposal would be to save money for delinquent plans and reduce PBGC's penalty receipts. But PBGC assesses penalties not to generate income but to encourage compliance and sanction non-compliance. If PBGC can achieve the same level of timely payment while assessing lower penalties, higher penalties are inappropriate. And lower penalties may tend to encourage the continuation and adoption of defined benefit plans, a favorable outcome for plan participants.

PBGC estimates that this rule would reduce penalty assessments for late payment of premiums by $2 million per year.

This proposed rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on the impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is consistent with certain requirements in title I of ERISA [6] and the Internal Revenue Code,[7] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[8] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[9]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities.

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule would 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. This certification is based on the fact that small plans generally pay small premiums and thus small penalties for late payment of premiums. The average late premium penalty paid by a small plan for the 2014 plan year was about $160. This proposed rule would cut penalty payments in half, and thus create an average annual net economic benefit for each small plan of about $80. This is not a significant impact. PBGC invites public comment on this assessment.

[6] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[7] See, *e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[8] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[9] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC proposes to amend 29 CFR part 4007 as follows:

PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

■ 2. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words ''paragraphs (b) through (g)'' and adding in their place the words ''paragraphs (b) through (h)''; and by removing the words ''and is subject to a floor of $25 (or, if less, the amount of the unpaid premium)'';

■ b. Paragraph (a)(1) is amended by removing the words ''a written notice'' and adding in their place the words ''the first written notice''; by removing the words ''1 percent'' and adding in their place the words ''½ percent''; and by removing the words ''50 percent'' and adding in their place the words ''25 percent''.

■ c. Paragraph (a)(2) is amended by removing the words ''5 percent'' and adding in their place the words ''2½ percent''; and by removing the words ''100 percent'' and adding in their place the words ''50 percent''.

■ d. Paragraph (h) is added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(h) *Demonstrated compliance.* If paragraph (a)(1) of this section does not apply, PBGC will waive 80 percent of the otherwise applicable premium payment penalty under paragraph (a)(2) of this section if the criteria in both paragraphs (h)(1) and (2) of this section are met.

(1) For each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined,—

(i) Any required premium filing for the plan has been made; and

(ii) PBGC has not required payment of a penalty for the plan under this section.

(2) The amount of unpaid premium is paid within 30 days after PBGC issues the first written notice as described in paragraph (a)(1) of this section.

Issued in Washington DC this 21st day of April, 2016.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–09960 Filed 4–27–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 240 and 242

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket Numbers FMCSA–2015–0419 and FRA–2015–0111, Notice No. 2]

Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea; Public Listening Sessions

AGENCIES: Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public listening sessions.

SUMMARY: FMCSA and FRA announce three public listening sessions on May 12, 17, and 25, 2016, to solicit information on the prevalence of moderate-to-severe obstructive sleep apnea (OSA) among individuals occupying safety sensitive positions in highway and rail transportation, and of its potential consequences for the safety of rail and highway transportation. FMCSA and FRA (collectively ''the Agencies'') also request information on potential costs and benefits from possible regulatory actions that address the safety risks associated with motor carrier and rail transportation workers in safety sensitive positions who have OSA. The listening sessions will provide interested parties an opportunity to share their views and any data or analysis on this topic with representatives of both Agencies. The Agencies will transcribe all comments and place the transcripts in the dockets referenced above for the Agencies' consideration. The Agencies will webcast the entire proceedings of all three meetings.

DATES: The listening sessions will be held on:

- Thursday, May 12, 2016, in Washington, DC;
- Tuesday, May 17, in, Chicago, IL; and
- Wednesday, May 25, in Los Angeles, CA.

All sessions will run from 10 a.m. to noon and 1:30 p.m. to 3:30 p.m., local time. If all interested parties have the opportunity to comment, the sessions may conclude early.

ADDRESSES: The May 12, 2016, listening session will be held at the National Association of Home Builders, 1201 15th Street NW., Washington, DC 20005. The May 17, 2016, session will be held at the Marriott Courtyard Chicago Downtown/River North, 30 E. Hubbard Street, Chicago, IL 60611. The final session will be held on May 25, 2016, at the Westin Bonaventure Hotel and Suites, 404 S. Figueroa Street, Los Angeles, CA 90071. In addition to attending the sessions in person, the Agencies offer several ways to provide comments, as described below.

Internet Address for Live Webcast. The Agencies will post specific information on how to participate via the Internet on the Agencies' Web sites at *www.fmcsa.dot.gov/calendar* and *www.fra.dot.gov/* in advance of the listening session. This Notice provides more information on the listening sessions below in Section II., Meeting Participation and Information the Agencies Seek from the Public.

Written comments. You may submit comments identified by Docket Numbers FMCSA–2015–0419 and FRA–2015–0111 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., West Building, Ground Floor, Washington, DC 20590–0001;
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and
- *Fax:* 202–493–2251.

See the **SUPPLEMENTARY INFORMATION** section below for more details on how to submit written comments.

FOR FURTHER INFORMATION CONTACT: *For information about the listening sessions:* Ms. Shannon L. Watson, Senior Policy Advisor, FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590, by telephone at 202–366–2551, or by email at *shannon.watson@dot.gov.*

If you need sign language interpretation or any other accessibility accommodation, please contact Ms. Watson at least one week in advance of each session to allow us to arrange for such services. The Agencies cannot guarantee that interpreter services requested on short notice will be provided.

For other information on Obstructive Sleep Apnea:

FMCSA: Ms. Angela Wongus, Medical Programs Division, FMCSA, 1200 New Jersey Ave. SE., Washington, DC 20590, by telephone at 202–366–3109, or by email at *fmcsamedical@dot.gov.*

FRA: Dr. Bernard Arseneau, Medical Director, Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, by telephone at 202–493–6232, or by email at *bernard.arseneau@dot.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket numbers for this notice (FMCSA–2015–0419 and FRA–2015–0111), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. The Agencies recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agencies can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* enter the docket numbers, FMCSA–2015–0419 and FRA–2015–0111, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and