

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.6, this exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Accordingly, the Commission hereby grants an exemption as described in Section III above the 10 CFR 26.29(b) to allow the licensee to provide, in a confidential manner, information concerning a former employee's drug test results to the Louisiana Office of Employment Security.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (57 FR 6336).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of February 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/
IV/V, Office of Nuclear Reactor Regulation.
[FR Doc. 92-4880 Filed 3-2-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, March 12, 1992, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606-1500.

Dated: February 25, 1992.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory
Committee.

[FR DOC. 92-4808 Filed 3-2-92; 8:45 am]

BILLING CODE 8325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Assessment of Penalties for Failure to Provide Required Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of policy.

SUMMARY: Section 4071 of the Employee Retirement Income Security Act of 1974 authorizes the Pension Benefit Guaranty Corporation ("PBGC") to assess a penalty against any person that fails to provide a notice or other material information required under various statutory provisions, or regulations prescribed thereunder, within the applicable, specified time limit. The penalty, which is payable to the PBGC, may not exceed \$1,000 for each day the failure continues. The PBGC is publishing this statement of policy to advise the public of the manner in which the agency intends to exercise its authority, pursuant to section 4071, to assess penalties for failures to comply with requirements to provide the agency with material information. This statement informs the public of the types of factors and circumstances that the PBGC will consider in penalty assessment decisionmaking. It also describes the informal processes that agency staff will be utilizing in determining to assess penalties for certain failures and in reviewing the amounts assessed.

DATES: The policy set forth herein takes effect on March 3, 1992.

FOR FURTHER INFORMATION CONTACT: Israel Goldowitz, Assistant General Counsel, Office of the General Counsel, at 202-778-8886 (202-778-8859 for TTY and TDD). For a copy of material included in an agency manual, contact the Disclosure Officer, Communications and Public Affairs Department, the Pension Benefit Guaranty Corporation, room 7104, 2020 K Street, NW., Washington, DC 20006; 202-778-8839 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1001 *et seq.*). In 1986 and 1987, Congress significantly modified ERISA by enacting amendments aimed at improving the protection of pension benefits and controlling the costs of the insurance program. These reform measures included new and revised information requirements. They also

enhanced the agency's enforcement authority.

Among other things, in section 9314(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) (as subsequently clarified by section 7881(i)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239)), Congress added section 4071 to Title IV of ERISA (29 U.S.C. 1371). Section 4071, "Penalty for Failure to Timely Provide Required Information," authorizes the PBGC to assess penalties, as follows:

The corporation may assess a penalty payable to the corporation against any person who fails to provide any notice or other material information required under this subtitle [D], subtitle A, B, or C, [or] section 302(f)(4) or 307(e), or any regulations prescribed under any such subtitle or such section within the applicable time limit specified therein. Such penalty shall not exceed \$1,000 for each day for which such failure continues.

Implementation of the 1986 and 1987 amendments to Title IV of ERISA necessitated major programmatic changes. In instituting those changes, the PBGC has been considering various enforcement issues. That process has resulted in (among other things) the initial formulation of agency policy on assessing penalties against persons that fail to comply with information submission requirements, other than those prescribed with respect to the payment of premiums.

In this area, the objectives of the agency's policy are to deter violations of and secure compliance with regulatory requirements (in both specific matters and generally), as well as to recover at least some of the administrative and other costs of not receiving, in a timely manner, information to which the agency is entitled. In essence, by increasing the potential costs of noncompliance to persons required to provide the PBGC with information, the agency hopes to reduce the incidence and length of compliance failures and, hence, the adverse effects of such failures on the agency's effectiveness in carrying out the purposes of Title IV of ERISA, as set forth in section 4002(a) (29 U.S.C. 1302(a)).

The PBGC emphasizes that the policy stated herein is the first effort at exercising the discretionary authority provided by section 4071 to achieve this goal with respect to failures to comply with certain regulatory requirements. The agency anticipates that, as it gains experience with penalty assessment, its policy will evolve. Moreover, while persons subject to ERISA and PBGC regulations are presumed to know their

provisions, the PBGC also is furthering its deterrence objective by indicating, where appropriate, the potential for penalty assessment in its instructions for filing notices and in other communications with persons responsible for submitting material information. Finally, the agency notes that a decision to assess a penalty pursuant to section 4071 does not preclude other enforcement or remedial action by the PBGC.

To assist its staff in applying agency policy to particular failures to provide the PBGC with material information (including any notice), the PBGC has added "Assessment of Penalties for Failure to Timely Provide Required Information" (the "operating policy issuance") to the PBGC Operating Policy Manual (included as Chapter 8, Section 1).¹ When a person does not comply with a requirement to submit such information within a time limit that ends on or after publication of this statement in the *Federal Register*, the operating policy issuance will guide case-by-case staff determinations about the amount of any penalty, including whether the penalty should continue to accrue and whether, upon review at the request of a person against which a penalty is assessed, the amount assessed should be reduced.²

The agency still is considering policy issues in the premium area. Therefore, the operating policy issuance does not, at the current time, apply to matters addressed under section 4007 of ERISA (29 U.S.C. 1307) and part 2610 of the regulations (29 CFR part 2610). The PBGC also may assess a penalty, after considering the factors set forth below, in other situations to which the operating policy issuance does not apply. In particular, the PBGC may decide that a penalty should be assessed for an ongoing failure that began before today's publication.

Agency policy is to structure penalties to encourage compliance with regulatory requirements. Therefore, when the receipt of overdue material information still would assist the agency in carry out the purposes of Title IV, the PBGC will consider making the penalty a charge that continues to accrue, but it will consider reducing the penalty upon review if prompt action has been taken

¹ As provided in Part 2603 of the PBGC's regulations (29 CFR part 2603), this issuance (as well as other organizational and administrative staff manual materials referred to below) is available to the public. Anyone desiring a copy of such material should contact the agency's Disclosure Officer, at the address or phone number listed at the beginning of this document.

² These determinations are not subject to part 2606 of the PBGC's regulations (29 CFR part 2606).

to end the failure. The agency also notes that the objective of deterring violations of regulatory requirements and the fact that the PBGC incurs losses due to delays and omissions in providing information (including administrative costs) may make assessment of a penalty appropriate even when the PBGC no longer needs to obtain such information from the person that committed the violation or when the information is submitted after the applicable time limit has passed.

Factors and Circumstances To Be Considered

The agency believes that the following factors are relevant in determining the amount of a penalty to be assessed pursuant to section 4071 of ERISA:

- (1) The extent of the failure,
- (2) The financial or administrative harm to the PBGC's program,
- (3) The willfulness of the failure, and
- (4) The likelihood that the penalty will be paid.

These factors are to be considered in the context of the facts and circumstances of a particular case. Thus, for example, in evaluating the extent of a failure to notify the PBGC of a reportable event in accordance with section 4043 of ERISA (29 U.S.C. 1343) as implemented by part 2615 of the regulations (29 CFR part 2615), the PBGC will consider whether or not a plan administrator submitted any notice within the 30-day time period and, if so, what required information was and was not included in that notice (see, e.g., § 2615.3 of the regulations). In addition, as regards harm to the program, the PBGC has developed guidelines for determining the amount of a penalty to be assessed for failure to file a notice certifying distribution of plan assets in a standard termination (see subsection (b)(3)(B) of section 4041 of ERISA (29 U.S.C. 1341)) or a notice of a reportable event.³ and the agency may revise these

³ These guidelines, which are appended to the operating policy issuance, are as follows:

1. Failure to file a post-distribution certification in a standard termination. Within 30 days after the final distribution of assets is completed in a standard termination, the plan administrator must send a notice to the PBGC certifying that plan assets have been distributed in accordance with the law (see PBGC Form 501). Not receiving these certifications causes the PBGC to expend both clerical and professional time determining if a distribution has occurred and obtaining the required documentation. The total penalty assessed should not exceed the lesser of \$50 a day until the certification is submitted or \$200 times the number of participants entitled to a distribution in the termination.

2. Failure to file a notice of a reportable event. Except where expressly waived by 29 CFR part 2615, the plan administrator must file a notice of a reportable event in accordance with 29 CFR part

guidelines as it gains experience with assessing penalties for various compliance failures.

The PBGC believes that a person assessed a penalty should have an opportunity to provide the agency with information which tends to show that, in view of the facts and circumstances of the case, the amount assessed on the basis of the above factors should be reduced. Therefore, the agency will provide an opportunity for administrative review of the amount of a penalty. If and to the extent the agency concludes, upon such review, that mitigating facts and circumstances warrant such action, PBGC policy is to reduce the amount initially assessed (including possible elimination of any penalty). The agency views information tending to show that events outside a person's control that could not reasonably have been anticipated prevented compliance as well as action to end the failure as particularly relevant in determining whether to affirm or reduce the amount of a penalty.

Assessment Process

The PBGC has decided to channel the penalty assessment function (including review of the amounts initially assessed) according to applicable assignments of responsibilities, while also taking into account administrative efficiency and effectiveness and seeking to assess penalties consistently. These assignments are set forth in the mission and functions statements issued by the Executive Director and included (along with organization charts) in the PBGC Directives Manual as Section 30-1 of Part GA (General Administration).

Until recently, this policy decision meant that the organizational unit with primary responsibility generally would have been the Case Operations and Assistance Division ("COAD") of the Insurance Operations Department

2615 within 30 days of the date the plan administrator knows or has reason to know of the occurrence of the event. Deterring violations of 29 CFR part 2615 is very important because when information is obtained can greatly affect the PBGC's ability to minimize its losses and those of participants. Consequently, the PBGC must encourage compliance by exercising its authority to assess penalties at up to the statutory maximum level (i.e., up to and including \$1000 a day for each day the failure continues after the 30-day time limit). However, unless there are indications that the PBGC's or participants' potential losses attributable to the failure exceed the total of any daily penalty, the amount of this penalty should not exceed \$10,000.

(Note: This guidance only applies when there is no submission within the 30-day time limit.)

("IOD").⁴ However, the PBGC currently is reorganizing certain agency responsibilities.

At the end of 1990, the PBGC established the Corporate Finance and Negotiations Department ("CFND") in order, among other things, to provide the PBGC's Chief Negotiator with staff support in the analysis of significant potential demands on the pension insurance program and to coordinate the policy, legal, and operational elements of the PBGC's responses to major financial events. The agency has decided that when the submission involves a matter with respect to which CFND is responsible for providing staff support, that department will have primary responsibility for the penalty assessment function.⁵

In addition, as of July 1991, COAD has become the nucleus of a new department, the Case Operations and Compliance Department ("COCD"). The PBGC anticipates that further structural refinements will be made to strengthen agency management, and it is in the process of reviewing PBGC directives to ensure that they reflect organizational realignments. In the interim and with exceptions not relevant here, COCD is continuing to fulfill the mission and functions previously assigned to COAD.⁶

Under the reorganized agency structure, the COCD unit with primary responsibility for the penalty assessment function will be the Administrative Review and Technical Assistance Division ("ARTAD", formerly COAD's Coverage and Inquiries Branch). ARTAD will obtain information from and consult with staff in other divisions of COCD, IOD, and the Office of the General Counsel ("OGC") as appropriate.

Finally, as indicated above, the agency still is considering policy issues in the premium area. If the PBGC decides to apply the operating policy issuance to failures in the premium area, it expects that primary responsibility for

such matters will be within the Financial Operations Department.

COCD, IOD, and CFND have developed procedural materials for implementing the agency's policy, consistent with the guidance provided in the operating policy issuance. (These materials include "Penalty Assessment Procedures—COCD" (currently Chapter 3, Section M of Part 4—Case Operations and Assistance Division—of the IOD Operations Manual), additions to Part 2—Case Processing Division—of the IOD Operations Manual (currently found in Chapter 2, CPD Administrative Procedures, and Chapter 6, Reportable Events), and "Penalty Assessment Procedure, Corporate Finance and Negotiation Department (CFND)".) When PBGC staff assigned to particular matters or otherwise responsible for assuring compliance with submission requirements believe that material information has not been provided to the PBGC within the applicable time limit, they will review available records and attempt to resolve factual issues. If it then appears that a penalty should be assessed, PBGC staff will submit the matter to the appropriate assessing official.

If the assessing official determines that a penalty should be assessed, he or she will notify the person or persons responsible, in writing, of the factual and legal basis for the penalty and how to obtain review of the amount assessed. Review of the amount assessed will be conducted by a reviewing official (an official of at least the same level of authority as the assessing official) if requested in writing within 30 days of the date of the notice of initial penalty assessment. Upon completion of his or her review, the reviewing official (or if review has not been requested, the assessing official) will notify the person or persons responsible, in writing, of the penalty owed, including (if there has been review) a brief statement of the reason(s) why the amount assessed has or has not been changed, and will request payment within 14 days. (If review is requested after the 30-day period but before the assessing official has notified the person(s) responsible of the penalty owed, the reviewing official may decide there is good cause to review the amount assessed.) If a penalty is not paid when due, the matter is to be referred for collection.⁷

⁷ The PBGC is in the process of developing staff instructions for the recovery of certain benefit overpayments. If the agency extends its management procedures to the recovery of other debts, they will apply to collection of penalties assessed pursuant to section 4071 of ERISA.

Issued in Washington, DC this 27th day of February, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-4909 Filed 3-2-92; 8:45 am]

BILLING CODE 7708-01-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of the Addition of a New Routine Use and Amendment of an Existing Routine Use in System of Records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add a new routine use to and to amend an existing routine use in system USPS 050.020, Finance Records—Payroll System. The new routine use will permit disclosure of limited information to the Health Care Financing Administration (HCFA) about group health provider coverage for career and certain temporary postal employees who have been identified by HCFA as Medicare-eligible. Existing routine use No. 9 is amended to clarify language and correct the names of agencies and programs that have changed since adoption of the routine use.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (April 2, 1992) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to the Records Office, US Postal Service, 475 L'Enfant Plaza SW, RM 8141, Washington, DC 20260-5010, or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 8141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the federal health insurance "Medicare" program. A recent amendment (42 USC 1395y(b)(5)) of the Social Security Act requires the HCFA, Internal Revenue Service, and Social Security Administration to share information that identifies workers (or spouses) who are Medicare beneficiaries, the workers'

⁴ IOD's mission has included (among other things) discharging the PBGC's responsibilities for processing plan terminations, withdrawals of substantial employers from plans to which more than one employer contributes, and notices of reportable events; and conducting PBGC compliance activities.

⁵ Where CFND is exercising responsibility, consultation with the PBGC's Chief Negotiator will precede a decision to pursue penalty assessment.

⁶ COAD's mission has included (among other things) management of the PBGC's program of processing standard termination filings, identifying noncompliance and related problems; conducting a program of technical assistance related to potential reportable events and terminations; monitoring plan administrator adherence to filing requirements; and controlling, screening, and conducting initial processing of cases.