

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 655**

RIN 1205-AB36

**Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States; Re-Opening and Extension of Comment Period****AGENCIES:** Employment and Training Administration, Labor.**ACTION:** Proposed rule; reopening and extension of comment period.**SUMMARY:** This document informs the public that the comment period for the Notice of Proposed Rulemaking for Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States is re-opened and extended.**DATES:** The comment period for the notice of proposed rulemaking published January 27, 2005 (70 FR 3993), has been extended until April 8, 2005.**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB36, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *E-mail:* Comments may be submitted by e-mail to [H2B.Comments@dol.gov](mailto:H2B.Comments@dol.gov). Include RIN 1205-AB36 in the subject line of the message.
- *U.S. Mail:* Submit written comments to the Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC, is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

*Instructions:* All submissions received must include the RIN 1205-AB36 for this rulemaking. Receipt of submissions will not be acknowledged because DOL continues to experience occasional delays in receiving postal mail in the Washington, DC, area; commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (e.g., large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693-3010 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210, telephone: (202) 693-3010 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** An H-2B nonimmigrant is admitted temporarily to the United States to perform temporary nonagricultural labor or services. On January 27, 2005, the Department of Labor's Employment and Training Administration (DOL or ETA) and the Department of Homeland Security (DHS) simultaneously published in the **Federal Register** proposed rules to change the procedures for the issuance of H-2B visas. 70 FR 3984 and 3993. Under DOL's proposed rule, H-2B petitions filed with DHS, with the exception of workers in logging, the entertainment industry, or professional athletics, will require employers to satisfy specific attestations concerning labor market issues. These attestations have been developed by the DOL and are included in DOL's proposed rule and incorporated in the DHS proposed regulation. In addition, under the proposed rule, the DOL will receive information on petitions that have been approved and received final adjudication from the DHS. The DOL will be conducting post-adjudication audits of attestations submitted in support of selected approved H-2B petitions received from the DHS. Given the complexity of the proposed rule and the intense level of interest, the comment period is being re-opened and extended.

DOL published its notice of proposed rulemaking in the **Federal Register** of January 27, 2005 (FR Doc. 05-1222), at 70 FR 3993. The notice invited interested persons to submit written comments on the proposed rule on or before February 28, 2005. This

document re-opens and extends the comment period through April 8, 2005.

Signed in Washington, DC, this 3rd day of March 2005.

**Emily Stover DeRocco,***Assistant Secretary, Employment and Training Administration.*

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BILLING CODE 4510-30-P

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4000 and 4007**

RIN 1212-AB02

**Electronic Premium Filing****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Proposed rule.

**SUMMARY:** The PBGC proposes to require electronic filing of premium declarations. The requirement would become effective for plans with 500 or more participants starting with the 2006 plan year and for smaller plans starting with the 2007 plan year. Plans could apply to the PBGC for exemptions on a case-by-case basis. The PBGC has instituted an on-line e-filing facility ("My Plan Administration Account," or "My PAA"), and during 2005 will upgrade My PAA to accept electronic filings made with the use of vendor or proprietary software.

**DATES:** Comments must be received on or before May 9, 2005.

**ADDRESSES:** Comments may be mailed or delivered to the Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026. Comments also may be submitted electronically through the PBGC's Web site at <http://www.pbgc.gov/regs>, or by fax to 202-326-4112. The PBGC will make all comments available on its Web site, <http://www.pbgc.gov>. Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office 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:** James J. Armbruster, Acting Director, or Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TTD users, call the Federal relay service

toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** This proposed rule is part of an ongoing implementation of the Government Paperwork Elimination Act by the Pension Benefit Guaranty Corporation ("PBGC") and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses electronic submission of premium filings required under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007) and builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). Pension plans covered by Title IV must pay annual premiums to the PBGC. Premium filings must include information to identify the plans for which premiums are paid and to demonstrate that the amounts paid are correct.

The PBGC has been processing premium filings for 30 years. The volume of filings processed annually is in the tens of thousands. Processing methods have become progressively more automated, and the PBGC now uses specially designed premium forms that can be read by optical character recognition ("OCR") devices. Even with OCR, however, the PBGC has found that the capture of data from paper premium forms and its translation into electronic data files is an imperfect process that inevitably gives rise to errors that can be difficult and burdensome to detect and correct. These errors cause problems for both the PBGC and premium filers, because they can lead to the issuance of improper bills for premiums that have in fact been paid, to delays in the processing of refund requests, to erroneous filing histories, etc.

Consistent with the Government Paperwork Elimination Act, and with a view to reducing problems of this kind, the PBGC introduced optional electronic premium filing for plan years beginning in 2004 using a facility on its Web site ([www.pbgc.gov](http://www.pbgc.gov)) called "My Plan Administration Account" ("My PAA"). To make a premium filing using My PAA, a plan administrator or other pension practitioner logs onto a secure account on the PBGC's Web site and enters necessary information in on-line forms screens. My PAA enables practitioners to route premium filings among themselves electronically for the

addition of information and for electronic certification and to submit completed filings to the PBGC with the click of a mouse. The information submitted can be loaded directly into the PBGC's data processing systems, thus eliminating the errors inherent in the OCR data capture process. Premium payments are also made on line as part of the filing process.

My PAA streamlines the premium filing process for users, and it makes the PBGC's processing of premium filings faster and more accurate. Thus it has the potential to reduce the number of erroneous bills, to speed up refund processing, and in general to improve significantly the PBGC's ability to perform its premium collection functions while enhancing service to premium payers.

The PBGC is now engaged in a project to create another premium e-filing method, to be operational in mid-2005, to accommodate pension practitioners who may prefer to continue using private sector software—either purchased annually from a commercial developer or developed "in-house"—for preparing premium filings. The PBGC will issue standards for structuring a computer file containing premium filing information; by incorporating those standards into their software, developers will give software users the ability to create premium data files that they will be able to upload to the PBGC through the PBGC's web site (probably through the existing My PAA portal). Using this new method, practitioners will be able to prepare premium filing information using their own software and then put the information into files that meet PBGC formatting standards and electronically transmit them to the PBGC. The PBGC expects to continue accepting premium payments from such filers in the same way it does now, by paper check, wire transfer, or Automated Clearing House.

Against this background, the PBGC is proposing to eliminate paper premium forms and to require electronic filing of annual premium information submissions for large plans (those with 500 or more participants) for plan years beginning after 2005 and for all plans for plan years beginning after 2006. The PBGC would grant case-by-case exemptions to the electronic filing requirement in appropriate circumstances for filers that demonstrated good cause for exemption. (The submission of information specially requested by the PBGC in connection with a premium compliance review would not be affected by this change, nor would there be a

requirement for payment to be made electronically.)

The PBGC invites public comment on this proposal, including the 500-participant cutoff that is used to determine whether a plan is required to begin e-filing in 2006 or 2007 (and is also used to determine whether a plan must pay the flat-rate premium early under 29 CFR 4007.11(a)(2), whether contributions may or must be included in assets under 29 CFR 4006.4(b)(2)(iv) in determining the variable-rate premium, whether significant events must be taken into account under 29 CFR 4006.4(d) when using the alternative calculation method for the variable-rate premium, whether a fully funded plan qualifies for a variable-rate premium exemption under 29 CFR 4006.5(a)(1), and whether a plan may base its variable-rate premium on accrued rather than vested benefits under 29 CFR 4006.5(b)).

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

The PBGC has determined, in consultation with the Office of Management and Budget ("OMB"), that this proposed rule is a "significant regulatory action" under Executive Order 12866. OMB has therefore reviewed this proposed rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. The PBGC expects electronic premium filing to be no more burdensome than paper filing for filers generally and will grant exemptions from the electronic filing requirement for good cause in appropriate circumstances. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

The PBGC is submitting the information requirements contained in this proposed rule to OMB for review and approval under the Paperwork Reduction Act. Copies of the PBGC's request may be obtained free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202-326-4040. This proposed rule would modify paperwork collections under both part 4000 (OMB control number 1212-0059) and part 4007 (OMB control number 1212-0009).

The PBGC needs the information required to be submitted under part 4007 to identify the plans for which

premiums are paid and to determine whether the amounts paid are correct.

The PBGC estimates that it will receive premium filings annually from about 28,900 plan administrators and that the total annual burden of the collection of information will be about 3,478 hours and \$18,172,550. (These estimates include paper and electronic filings.)

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Although comments may be submitted through May 9, 2005, the Office of Management and Budget requests that comments be received on or before April 8, 2005 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### List of Subjects

##### 29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### 29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC proposes to amend 29 CFR parts 4000 and 4007 as follows.

#### **PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION**

1. The authority citation for part 4000 continues to read as follows:

**Authority:** 29 U.S.C. 1082(f), 1302(b)(3).

2. In § 4000.3, paragraph (a) is amended by removing “You may file”

and adding in its place “Except for premium declarations, you may file; by redesignating paragraph (b) as paragraph (c) and revising its heading to read “Information on electronic filings.”; and by adding a new paragraph (b) to read as follows:

#### **§ 4000.3 What methods of filing may I use?**

\* \* \* \* \*

(b) *Required electronic filings.* You must file premium declarations electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances.

(1) This electronic filing requirement applies to filings for—

(i) Plan years beginning after 2005 for plans that were required to pay premiums for 500 or more participants for the plan year preceding the premium payment year and

(ii) Plan years beginning after 2006 for all other plans.

(2) This electronic filing requirement does not apply to information you file to comply with a request we make under § 4007.10(c) of this chapter (dealing with providing record information in connection with a premium compliance review).

3. In § 4000.4, remove the last sentence and add two new sentences in its place to read as follows:

#### **§ 4000.4 Where do I file my submission?**

\* \* \* You do not have to provide an address for electronic premium submissions made through our web site. We are responsible for ensuring that such submissions go to the proper place.

4. In § 4000.23, add a new sentence at the end of paragraph (a) and at the end of paragraph (b)(3) to read as follows:

#### **§ 4000.23 When is my submission or issuance treated as filed or issued?**

(a) \* \* \* A submission made through our web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) \* \* \*

(3) \* \* \* A submission made through our web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

5. In § 4000.29, add three new sentences at the end of paragraph (a) introductory text to read as follows:

#### **§ 4000.29 What if I use electronic delivery?**

(a) \* \* \* A submission made through our web site is considered to have been transmitted when you perform the last act necessary to indicate that your

submission is filed and cannot be further edited or withdrawn. You do not have to provide an address for electronic premium submissions made through our web site. We are responsible for ensuring that such submissions go to the proper place.

\* \* \* \* \*

#### **PART 4007—PAYMENT OF PREMIUMS**

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

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

7. Section 4007.3 is revised to read as follows:

#### **§ 4007.3 Filing requirement; method of filing.**

The estimation, declaration, reconciliation, and payment of premiums shall be made in accordance with the instructions posted on the PBGC's Web site ([www.pbgc.gov](http://www.pbgc.gov)). No later than the applicable due date specified in § 4007.11, the plan administrator of each covered plan shall file in the prescribed format the prescribed information and any premium payments due. Information must be filed electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances. The requirement to file electronically applies to filings for plan years beginning after 2005 for plans that were required to pay premiums for 500 or more participants for the plan year preceding the premium payment year and to filings for plan years beginning after 2006 for all other plans. (The requirement to file electronically does not apply to information filed to comply with a PBGC request under § 4007.10(c) (dealing with providing record information in connection with a premium compliance review).)

8. Section 4007.4 is revised to read as follows:

#### **§ 4007.4 Where to file.**

See § 4000.4 of this chapter for information on where to file.

Issued in Washington, DC, this 3rd day of March, 2005.

**Bradley D. Belt,**

*Executive Director, Pension Benefit Guaranty Corporation.*

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