

### Availability of NPRMs

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You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the Fresno Yosemite International Airport Class E3 airspace extending upward from the surface of the earth. The Clovis VORTAC was decommissioned and requires the legal descriptions in FAA Order 7400.11E be rewritten to eliminate reference to this navigational aid. In addition, during review of the Class E airspace extending upward from the surface as an extension to the Class C surface area, it was identified that the airspace is no longer needed to support approaches into the airport. This action would support the operation of Instrument Flight Rules (IFR) under standard instrument approach and departure procedures in the National Airspace System.

Class E airspace designations are published in paragraph 6003 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

#### **6003. Class E Airspace Areas Designated as an Extension.**

The Class E airspace areas listed below consist of airspace extending upward from

the surface designated as an extension to a Class C surface area.

\* \* \* \* \*

#### **AWP CA E3 Fresno, CA [Remove]**

Fresno Air Terminal, CA  
(Lat. 36°46'34" N, long. 119°43'06" W)  
Clovis VORTAC  
(Lat. 36°53'04" N, long. 119°48'55" W)

Issued in Seattle, Washington, on October 6, 2020.

**Byron Chew,**

*Acting Manager, Operations Support Group,  
Western Service Center.*

[FR Doc. 2020–22566 Filed 10–9–20; 8:45 am]

**BILLING CODE 4910–13–P**

### **PENSION BENEFIT GUARANTY CORPORATION**

#### **29 CFR Parts 4001 and 4901**

**RIN 1212–AB44**

#### **Examination and Copying of PBGC Records**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would update and clarify guidance on examining records kept by the Pension Benefit Guaranty Corporation. The proposed amendments reflect statutory changes to the Freedom of Information Act and recent updates to PBGC's procedures for record examination.

**DATES:** Comments must be submitted on or before December 14, 2020 to be assured of consideration.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Email:* [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). Include RIN 1212–AB44 in the subject line.

- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation or PBGC) and the Regulation Identifier Number for this rulemaking (RIN 1212–AB44).

Comments received will be posted without change to PBGC's website, <http://www.pbgc.gov>, including any personal information provided. 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 users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.)

**FOR FURTHER INFORMATION CONTACT:**

Melissa Rifkin ([rifkin.melissa@pbgc.gov](mailto:rifkin.melissa@pbgc.gov)), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–326–4400, extension 6563. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 6563.)

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Purpose and Authority*

The purpose of this regulatory action is to update the Pension Benefit Guaranty Corporation’s (PBGC’s) regulation on requesting, obtaining, and examining records to reflect statutory changes and current agency practice. Authority for this rule is provided by section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 and by the Freedom of Information Act, as amended.

*Major Provisions*

This proposed rule would:

- Clarify that PBGC’s disclosable records are generally available in an electronic, rather than paper, format.
- Describe the procedure to seek expedited treatment for record requests.
- Clarify the acceptable methods for submitting record requests.
- Update the time limit to respond to record requests.
- Clarify the procedures available to a requester when PBGC extends the time to respond to a disclosure request or an appeal.
- Clarify the procedure for responding to requests that are of concern to a Federal agency other than PBGC.
- Update the fees for search and review time.
- Modify the definitions of certain categories of requesters.

**Background**

The Pension Benefit Guaranty Corporation (PBGC) proposes to amend its regulation on Examination and Copying of PBGC Records (29 CFR part 4901) (“FOIA regulation”) to: (1) Incorporate statutory changes to the Freedom of Information Act (5 U.S.C. 552) (“FOIA”) made by the FOIA Improvement Act of 2016 (“the 2016 Act”) and prior statutory amendments;

(2) reflect PBGC’s current procedures for processing and responding to FOIA requests; and (3) update the fees charged to certain requesters to more accurately reflect PBGC’s costs in performing the search and review work that is necessary to respond to their FOIA requests. The proposed rule would also make clarifications and other editorial changes to 29 CFR part 4901.

PBGC is committed to maintaining excellent customer service in responding to FOIA requests. Since 2015, PBGC has received the Department of Justice’s Office of Information Policy’s highest score in each key area for which it recognizes agencies: (1) Applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing any backlogs and improving timeliness.<sup>1</sup> A 2015 audit by the National Security Archive, a non-governmental organization, gave PBGC its highest rating and found it to be among “the best overall [for] . . . proactively meeting the 21st Century Standard of posting all or nearly all FOIA releases online.”<sup>2</sup> The proposed changes would further improve PBGC’s FOIA process and increase the transparency of its procedures.

**Proposed Amendments**

*Records Available in an Electronic Format*

Section 2 of the 2016 Act replaced references to “public inspection and copying” in the FOIA with “public inspection in an electronic format.” A stated goal of the 2016 Act was to “require federal agencies to make their disclosable records and documents available for public inspection in an electronic format.”<sup>3</sup> PBGC’s Disclosure Division follows this directive and produces disclosable records in an electronic format, but in several places PBGC’s FOIA regulation refers to the practice of offering paper copies of documents. PBGC proposes to replace

the term “copy” in its FOIA regulation with language conveying that, where practicable, records covered under the FOIA are available or will be made available in an electronic, rather than paper, format. Also, PBGC proposes to add in § 4901.2 a definition of the term “record” with a reference to the statutory definition, which includes information in an electronic format.

*Electronic Reading Room*

PBGC used to maintain a reference room on site where members of the public could inspect and copy certain PBGC records without formally requesting them. Following the directive of the 2016 Act to make records and documents available for public inspection in an electronic format, PBGC modified its FOIA regulation and replaced instances of the term “reference room” with “electronic reading room,” meaning an online and publicly accessible database of certain PBGC records.<sup>4</sup>

PBGC proposes to update § 4901.4(c) of the FOIA regulation to remove the requirement that PBGC keep a register for the purpose of collecting the names of people who inspect rulemaking proceedings in the electronic reading room and the times at which they do so. This requirement was possible with PBGC’s on site reference room but is impractical with its electronic reading room. It would be unnecessarily burdensome to require individuals who inspect rulemaking proceedings in the electronic reading room to provide their names.

*Submitting a Record Request*

PBGC proposes to amend § 4901.11 of the FOIA regulation to clarify the procedures for submitting a request for records. First, PBGC’s Disclosure Division requires FOIA requests to be in writing, and the proposed amendment would codify this requirement. Second, the proposed amendment would codify that electronic telecommunication (*i.e.*, email, online portal) is an approved method to submit a FOIA request. Third, the proposed amendment would add a statement that a requester may seek the assistance of a PBGC FOIA Public Liaison and a description of this position. PBGC’s Disclosure Division has designated FOIA Public Liaisons, as required by FOIA, who will assist requesters with describing records they are seeking, understanding the status of requests, and resolving disputes. PBGC proposes this addition to § 4901.11 to highlight the availability of this help.

<sup>1</sup> See Department of Justice, Summary of Agency Chief FOIA Officer Reports for 2015, 2016, 2017, and 2018. See for 2018, [www.justice.gov/OIP/Reports/2018Summary%26Assessment/download#2018](http://www.justice.gov/OIP/Reports/2018Summary%26Assessment/download#2018); for 2017, [www.justice.gov/oip/reports/2017\\_cfo\\_summary\\_and\\_assessment.pdf/download](http://www.justice.gov/oip/reports/2017_cfo_summary_and_assessment.pdf/download); for 2016, [www.justice.gov/oip/reports/2016\\_cfo\\_summary\\_and\\_assessment/download](http://www.justice.gov/oip/reports/2016_cfo_summary_and_assessment/download); and for 2015, [www.justice.gov/oip/2015\\_cfo\\_summary\\_and\\_assessment.pdf/download](http://www.justice.gov/oip/2015_cfo_summary_and_assessment.pdf/download).

<sup>2</sup> See *Most Agencies Falling Short on Mandate for Online Records, The National Security Archive 2015 E-FOIA Audit*, [nsarchive2.gwu.edu/NSAEBB/NSAEBB505/](http://nsarchive2.gwu.edu/NSAEBB/NSAEBB505/).

<sup>3</sup> Congressional Research Services, Summary of FOIA Improvement Act of 2016, Public Law 114–185, June 30, 2016.

<sup>4</sup> See 82 FR 26990 (June 13, 2017).

In addition, PBGC proposes to clarify its procedures applied when a FOIA request does not sufficiently describe the records being sought. Section 4901.12(b) of the FOIA regulation states that PBGC will offer assistance to a requester who has submitted a deficient request. The proposed amendment would add that the requester will be informed of the availability of assistance from the FOIA Public Liaison, that failure to reasonably describe the records being sought could cause a delay in responding to the request or a denial of the request, and that an amended request must provide sufficient detail to meet the requirements of an original request.

#### *Action on Request*

Section 552(a)(6)(A)(i) of the FOIA provides that a Federal agency has 20 working days to make a determination on a FOIA request. A Senate Report to the Electronic Freedom of Information Act Amendments of 1996,<sup>5</sup> the law that increased the required response period from 10 to 20 days, said, "Compliance with the 10-day rule is a practical impossibility for the majority of agencies."<sup>6</sup> Therefore, PBGC proposes to update the time limit for responding to FOIA requests in § 4901.14(a) of the FOIA regulation from 10 working days to 20 working days, not including extensions. In practice, PBGC already follows the time limit permitted under the statute to allow for thorough and appropriate searches and reviews of agency records.

Section 552(a)(6) of the FOIA provides that Federal agencies have a single opportunity to ask the requester for additional information and toll the 20-working day response period while awaiting the requester's response. This provision is intended to "ensure accuracy in FOIA responses."<sup>7</sup> PBGC's Disclosure Division follows the statute with respect to tolling the response period, and PBGC proposes to codify this practice in § 4901.14(a).

Also, PBGC proposes to add to § 4901.14(b) a provision that PBGC will provide records in the format specified in the request if practicable.

Finally, PBGC proposes to clarify its procedures for when a requested record cannot be located. Section 4901.14(d) of the FOIA regulation states that a request may be denied if a record is not located in time to determine whether it may be disclosed. PBGC proposes to clarify that when records cannot be located despite

a reasonably calculated search to uncover all relevant documents, PBGC will let the requester know there are no records to provide, rather than deny the request.

#### *Appeals*

Under PBGC's procedures, a requester may appeal any adverse determination by the Disclosure Division. However, § 4901.15(a) states only that a requester may appeal a denial of a request for disclosure of information. The proposed amendment to § 4901.15(a) would clarify that a requester may appeal any adverse decision by the Disclosure Division under FOIA, including a denial of: access to records, expedited processing, or waiver of fees. It also would clarify the instructions for submitting an appeal.

#### *Extensions of Time*

As provided for in section 552(a)(6)(B) of the FOIA and § 4901.16 of the FOIA regulation, PBGC may extend its time to respond to a disclosure request or an appeal when it must collect records stored offsite, examine a voluminous amount of records, or consult with another agency to respond to a FOIA request. PBGC proposes to add to § 4901.16 that when that extension of time exceeds 10 working days, the requester will be provided with an opportunity to seek assistance, modify the request, or arrange an alternative time period (with new response due dates) for processing the original or modified request. This change is intended to improve customer service.

#### *Expedited Action on Requests and Appeals*

Section 552(a)(6)(E)(i) of the FOIA states that Federal agencies must promulgate regulations to provide expedited processing of FOIA requests and appeals where the requester demonstrates a compelling need and for other reasons determined by the agency. PBGC's Disclosure Division has a process to request and receive expedited processing. The proposed regulation would codify this process. Proposed new § 4901.17 would allow a requester to submit a request for expedited action on a disclosure request or appeal. PBGC would act on the disclosure request or appeal as soon as practicable if the requester demonstrates that: (1) A lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights, or (2) the requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently

needed to inform the public about an actual or alleged Federal Government activity.

The proposed rule would move the current § 4901.17 on exhaustion of administrative remedies to new § 4901.18.

#### *Record of Concern to More Than One Agency*

PBGC proposes to modify § 4901.23, which covers the procedures for a requested record that is of interest to a Federal agency other than PBGC. Currently, PBGC may release such a record only if it determines that PBGC's interest in the record is greater than that of the other agency. Under the proposed amendment, PBGC would have greater discretion over whether to transfer the request to another agency. If PBGC receives a request for records that is of concern to another agency, PBGC would either consult with the interested Federal agency about the requested records before determining whether the record is disclosable or refer the request to the interested Federal agency to make that determination. This change is intended to eliminate referrals where the requested record is of concern to the other agency, but PBGC is nonetheless able to determine whether it may be disclosed. Allowing a consultation in these situations will help to ensure that certain requests for records are not unnecessarily delayed.

#### *Charges for Services*

PBGC proposes to simplify the categories of requesters used to determine if a requester will be charged fees. Under § 4901.31(b), (1) non-commercial scientific or educational institutions and (2) the news media are considered as two separate categories. Under the proposed amendment, they would be combined into a single category, as all requesters that fall within these parameters are not assessed fees for responses to their FOIA requests.

In addition, PBGC proposes to update the definitions in § 4901.31(b). The definition of "commercial use" would state in proposed § 4901.31(b)(1)(ii) that such use may include litigation work and that PBGC will determine if a requester should be in the "commercial use" category on a case-by-case basis and inform the requester of its decision. The definition of "educational institution" would be modified in proposed § 4901.31(b)(2)(iii) to allow PBGC to verify that a request is in furtherance of scholarly research and state that PBGC will inform the requester of its decision. Also, the definition of "representative of the news

<sup>5</sup> Public Law 104-231.

<sup>6</sup> S. Rep. 104-272, May 15, 1996.

<sup>7</sup> 153 Cong. Rec. S15701-04, on the OPEN Government Act on 2007, Public Law 110-175.

media” would be updated and clarified in proposed § 4901.31(b)(2)(iv).

Finally, the proposed rule would clarify in proposed § 4901.31(e) the circumstances in which PBGC may fail to comply with a time limit under section 552(a)(6) of the FOIA but still assess fees.

#### *Fee Schedule*

PBGC proposes to update the fees charged for search and review time on its FOIA fee schedule. Under section 552(a)(4)(A)(i) of the FOIA,<sup>8</sup> Federal agencies must conform their FOIA fee schedules with OMB’s Uniform Freedom of Information Act Fee Schedule and Guidelines<sup>9</sup> (OMB Guidelines). This guidance states, “Agencies should charge fees that recoup the full allowable direct costs they incur.” Direct costs, per OMB Guidelines, include the salary rate, meaning basic rate of pay plus 16 percent, intended to cover benefits,<sup>10</sup> of the employee making the search. Agencies may establish an average rate for the range of grades typically involved if “a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive).”

PBGC’s fees are too low to comport with the requirement to fully recoup direct costs, per OMB Guidelines and 5 U.S.C. 552(a)(4)(A)(i). PBGC currently charges \$1.75 per quarter hour (\$7.00 per hour) for search and review work performed by custodial or clerical personnel and \$4.00 per quarter hour (\$16.00 per hour) for search and review work performed by supervisory and professional personnel. These rates were set in 1987<sup>11</sup> and have not been raised since. PBGC’s current fees are well below the salary rates of the PBGC employees working on FOIA requests.

PBGC personnel who typically conduct search and review work are a homogeneous class of professional employees. These employees generally are at the grade level of GS–12 or higher. Accordingly, PBGC proposes to set a single fee for search and review work performed by professional personnel at \$54.00 per hour (approximately basic

pay plus 16 percent<sup>12</sup> for a GS–12, step 5 employee in Washington, DC). The rate is within the range of fees charged by other agencies for search and review work by professional personnel.

The proposed change to PBGC’s fee schedule is unlikely to increase fees to individual plan participants or beneficiaries requesting their own records. PBGC considers most such requests to be covered wholly under the Privacy Act of 1974, 5 U.S.C. 552a, which allows fees only for duplication. Any components of these requests that are not covered under the Privacy Act likely require no more than two hours of search time, which, as “other requesters,” individual plan participants requesting their own records are granted at no charge. Also, PBGC will not earn any additional funds from this change, as FOIA fees are paid to the U.S. Treasury, rather than to the agency responding to the request.

In addition, PBGC proposes to streamline and simplify its methods of calculating certain fees under FOIA. Section 4901.32(a)(2) of the FOIA regulation states that PBGC’s transportation costs necessary for retrieving offsite records will be charged to a requester. Under the proposed amendment, PBGC would charge these costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

Finally, § 4901.32(a)(3), which establishes a different system of charges for searches of computerized records, would be deleted, and the outmoded limits on copied documents in § 4901.32(b)(3) and references to PBGC’s provision of a manual copying machine in § 4901.32(b)(4) would be deleted.

#### *Payment of Fees*

PBGC proposes changing the list in § 4901.33 of approved methods to submit payment of FOIA fees to check, money order or other PBGC permitted means. This change will allow PBGC to employ new technologies for submitting FOIA fee payments as they are developed.

#### *Waiver or Reduction of Charges*

Section 552(a)(4)(A)(iii) of the FOIA describes the conditions necessary to waive FOIA fees.<sup>13</sup> Because inability to pay is not described in this provision of

the statute, PBGC proposes to delete the language in § 4901.34(b) of the FOIA regulation, which provides that the Disclosure Officer may waive or reduce fees based on the requester’s inability to pay. The proposed rule would instead adhere to the statutory language about when fees may be waived. The proposed rule would also provide that PBGC will inform the requester in writing that a fee waiver request was denied and why. This proposed amendment is intended to increase accuracy and transparency about when fees may be waived.

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

##### *Executive Orders 12866, 13563, and 13771*

The Office of Management and Budget has determined that this rulemaking is not a “significant regulatory action” under Executive Order 12866. This rule updates PBGC’s FOIA regulation to comport with amendments to 5 U.S.C. 552 and PBGC’s procedures. Accordingly, this proposed rule is exempt from Executive Order 13771, and OMB has not reviewed the proposed rule under Executive Order 12866.

Executive Order 12866 directs 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).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this proposed rule and has concluded that there will be no significant economic impact as a result of the proposed amendments to PBGC’s regulation. Most of the proposed amendments merely clarify existing PBGC practices or modify the regulation to meet statutory requirements. The only additional costs to the public come from the update to the fees for search and review time under § 4901.32 to bring the fee schedule in line with current costs. Under the FOIA regulation, PBGC collects annually less than \$3,000 in fees for responding to FOIA requests. Under the proposed rule, PBGC anticipates that it will collect between \$6,500 and \$10,000 in fees annually. As such, the increased fees under § 4901.32 will not have a significant economic impact on the public.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing

<sup>8</sup> “[E]ach agency shall promulgate regulations . . . specifying the schedule of fees applicable to the processing of requests . . . Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.”

<sup>9</sup> 52 FR 10012 (March 27, 1987).

<sup>10</sup> See *id.*; see also Department of Justice, Office of Information Policy’s Template for Agency FOIA Regulations.

<sup>11</sup> See 52 FR 30662 (August 17, 1987).

<sup>12</sup> The 16 percent accounts for benefits, per OMB Guidelines.

<sup>13</sup> The conditions under 552(a)(4)(A)(iii) of the FOIA are, “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

their regulatory program for rules that “may be outmoded, ineffective, insufficient, or excessively burdensome.” These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified clarifications, updates, and improvements to this regulation consistent with the principles for review under Executive Order 13563. PBGC believes that the proposed changes will provide clearer guidance to the public.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act<sup>14</sup> 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 seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

#### *Small Entities*

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 substantially the same criterion PBGC uses in other regulations<sup>15</sup> and is consistent with certain requirements in title I of ERISA<sup>16</sup> and the Internal Revenue Code (Code),<sup>17</sup> as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.<sup>18</sup>

Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities.

<sup>14</sup> 5 U.S.C. 601 *et seq.*

<sup>15</sup> See, e.g., special rules for small plans under part 4007 (Payment of premiums).

<sup>16</sup> See, e.g., ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover few than 100 participants.

<sup>17</sup> 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.

<sup>18</sup> See, e.g., DOL’s final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,644 (Oct. 27, 2011).

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<sup>19</sup> under the Small Business Act. Therefore, PBGC requests comments on the appropriateness of the size standard used in evaluating the impact of the amendments in this proposed rule on small entities.

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. Most of the amendments clarify existing PBGC practices and will have a neutral cost impact. The amendment to PBGC’s search and review fees is consistent with OMB Guidelines. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

#### *Paperwork Reduction Act*

This document does not contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA).

#### **List of Subjects**

##### *29 CFR Part 4001*

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

##### *29 CFR Part 4901*

Freedom of information.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4001 and 4901 as follows.

#### **PART 4001—TERMINOLOGY**

■ 1. The authority citation for part 4001 continues to read as follows:

**Authority:** 29 U.S.C. 1301, 1302(b)(3).

■ 2. Amend § 4001.2 by revising the definition of “*Disclosure officer*” to read as follows:

##### **§ 4001.2 Definitions.**

\* \* \* \* \*

*Disclosure Officer* means the official designated as Disclosure Officer in the Office of the General Counsel, PBGC.

\* \* \* \* \*

<sup>19</sup> See, 13 CFR 121.201.

#### **PART 4901—DISCLOSURE AND PUBLIC INSPECTION OF PENSION BENEFIT GUARANTY CORPORATION RECORDS**

■ 3. The authority citation for part 4901 continues to read as follows:

**Authority:** 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 4. Revise the heading of part 4901 to read as set forth above.

■ 5. Revise § 4901.1 to read as follows:

##### **§ 4901.1 Purpose and scope.**

This part contains PBGC’s general rules implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, types of records subject to prohibitions or restrictions on disclosure, and procedures whereby members of the public may access and inspect PBGC records.

■ 6. Amend § 4901.2 by removing “party,” from the first sentence, and adding in alphabetical order a definition for “Record” to read as follows:

##### **§ 4901.2 Definitions.**

\* \* \* \* \*

*Record* has the meaning attributed to it by section 552(f)(2) of FOIA.

\* \* \* \* \*

##### **§ 4901.3 [Amended]**

■ 7. Amend § 4901.3 by removing “The PBGC” and adding in its place “PBGC”, and removing “website” and adding in its place “website”.

■ 8. Amend § 4901.4 by:

■ a. Removing “The PBGC shall” and adding in its place “PBGC will” in the introductory text;

■ b. Removing “Copies of **Federal Register** documents published by the PBGC, and copies of Federal” and adding in its place “**Federal Register** documents published by PBGC, and Federal” in paragraph (a);

■ c. Removing “Copies of informational” and adding in its place “Informational” in paragraph (b);

■ d. Revising paragraphs (c) and (d); and

■ e. Removing “paragraph (a)(2)” and adding in its place “section 552(a)(2)” in paragraph (e).

The revisions read as follows:

##### **§ 4901.4 Information maintained in electronic reading room.**

\* \* \* \* \*

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having

general applicability or legal effect with respect to members of the public or a class thereof;

(d) *Other agency proceedings, policies, staff manuals and instructions, and records.* Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case PBGC will explain in writing the justification for the deletion)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by PBGC;

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by PBGC and which have not been published in the **Federal Register**;

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by PBGC that affect any member of the public;

(4) *Frequently requested records.* Records that have been released under section 552(a)(3) of FOIA and have been the subject of three or more disclosure requests; and

(5) *Other records.* Records that have been released under section 552(a)(3) of FOIA and that PBGC determines, because of the nature of the records' subject matter, have become or are likely to become the subject of subsequent disclosure requests for substantially the same records; and

\* \* \* \* \*

■ 9. Revise § 4901.5 to read as follows:

**§ 4901.5 Disclosure of other information.**

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the Disclosure Officer will make any document (or portion thereof) from the records of PBGC in the custody of any official of PBGC available for inspection unless PBGC reasonably foresees that disclosure would harm an interest protected by an exemption under the provisions of section 552(b) of FOIA and subpart C of this part or disclosure is otherwise prohibited by law. The procedures in subpart B of this part must be used for records that are not made available in PBGC's electronic reading room under § 4901.4 and may be used for records that are available in

the electronic reading room. Records are not records of PBGC and are not required to be furnished under FOIA, if they could only be produced by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in existence.

(b) *Discretionary disclosure.* Unless prohibited from disclosure by § 4901.21(a), the Disclosure Officer may make any document (or portion thereof) from the records of PBGC available for inspection if the Disclosure Officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of PBGC.

■ 10. Revise § 4901.6 to read as follows:

**§ 4901.6 Filing rules; computation of time.**

(a) *Place, method, and date of filing.* (1) For rules about where to file a submission under this part with PBGC, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this part, see § 4000.3 of this chapter.

(3) For rules about the date that a submission under this part was filed with PBGC, see subpart C of part 4000 of this chapter.

(b) *Computation of time.* For rules about any time period under this part, see subpart D of part 4000 of this chapter.

■ 11. Revise § 4901.11 to read as follows:

**§ 4901.11 Submission of requests for access to records.**

(a) *In general.* A request to inspect any record subject to this subpart must be submitted in writing to the Disclosure Officer, Pension Benefit Guaranty Corporation, by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov*. To facilitate processing, "FOIA request" should appear prominently on the request.

(b) *Assistance with requests.* A person who intends to submit or has submitted a request to inspect any record subject to this subpart may at any time seek assistance from a FOIA Public Liaison listed on PBGC's website, *www.pbgc.gov*. PBGC's FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

■ 12. Amend § 4901.12 by:

■ a. Removing "Each request" and adding in its place "Each disclosure request" in paragraph (a);

■ b. Revising paragraph (b); and

■ c. Removing "Requests calling" and adding in its place "Disclosure requests calling"; removing "paragraph (a)(3)" and adding in its place "section 552(a)(3)"; removing "the PBGC" and adding in its place "PBGC"; and removing "disclosure officer shall" and adding in its place "Disclosure Officer will" in paragraph (c).

The revision reads as follows:

**§ 4901.12 Description of information requested.**

\* \* \* \* \*

(b) *Deficient descriptions.* (1) If the description is insufficient to enable a professional employee familiar with the subject area of the disclosure request to locate the record with a reasonable amount of effort, the Disclosure Officer will notify the requester and, to the extent possible, indicate the additional information required. PBGC will make every reasonable effort to assist a requester in the identification and location of the record or records sought. PBGC will not withhold records merely because of difficulty in finding them.

(2) A requester who is attempting to modify or reformulate a disclosure request may discuss the request with a FOIA Public Liaison, who is available to assist the requester in reasonably describing the records sought. If the requester fails to reasonably describe the records sought, PBGC's response to the request may be delayed or denied.

(3) Any amended disclosure request must meet the requirements for a request under paragraph (a) of this section.

\* \* \* \* \*

■ 13. Revise § 4901.13 to read as follows:

**§ 4901.13 Receipt by agency of request.**

The Disclosure Officer will note the date and time of receipt on each disclosure request for access to records. A disclosure request is deemed received and the period within which PBGC acts on the request, as set forth in § 4901.14, begins on the next working day following receipt, except that a disclosure request is deemed received only if and when PBGC receives all of the following:

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if PBGC determines that such charges may be substantial and so notifies the requester. Consent must be in the form of a statement that charges under subpart D of this part will be

acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in an initial disclosure request.

■ 14. Revise § 4901.14 to read as follows:

**§ 4901.14 Action on request.**

(a) *Time for action.* Promptly and in any event within 20 working days after receipt of a disclosure request (subject to extension under § 4901.16), the Disclosure Officer will take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section. Following receipt, PBGC may ask the requester for information once and toll the 20-day period until PBGC receives such information.

(b) *Request granted.* If the Disclosure Officer determines that the disclosure request will be granted, PBGC will so advise the requester and will promptly make the records available to the requester. PBGC will accommodate any specification of the preferred form or format for the sought record as stated in the request, if the record is readily reproducible in the preferred form or format.

(c) *Request denied.* If the Disclosure Officer determines that the disclosure request will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial, including, if applicable, a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld.

(d) *Records not located.* If the Disclosure Officer determines that, despite a reasonably calculated search to uncover all relevant documents, the requested records could not be located, PBGC will issue a “no-records” response, and so advise the requester in writing.

(e) *Information for requester.* Written responses issued under paragraph (c) or (d) of this section will include the name and title of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

■ 15. Amend § 4901.15 by:

■ a. Revising paragraphs (a) through (c); and

■ b. Removing “shall” and adding in its place “will”; and removing “the PBGC’s public reference” and adding in its place “PBGC’s electronic reading” in paragraph (d).

The revisions read as follows:

**§ 4901.15 Appeals from denial of requests.**

(a) *Submittal of appeals.* A requester may appeal any adverse determination by the Disclosure Officer of a request under FOIA, including a denial of a request for access to records, expedited action, or fee waiver. The requester may file a written appeal within 90 days from the date of the denial or, in the case of a partial denial, 90 days from the date the requester receives the disclosed material. The appeal must include the grounds for appeal and any supporting statements or arguments. The requester must address the appeal to the General Counsel, Pension Benefit Guaranty Corporation, and must submit the appeal by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC’s website, [www.pbgc.gov](http://www.pbgc.gov). To facilitate processing, the words “FOIA appeal” should appear prominently on the appeal.

(b) *Receipt and consideration of appeal.* The General Counsel will note the date and time of receipt on each appeal and notify the requester thereof. Within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel will issue a decision on the appeal.

(1) The General Counsel will determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat the pending action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel will either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted will promptly be made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in section 552(a)(4) of FOIA. The General Counsel’s decision will be the final action of PBGC with respect to the request.

\* \* \* \* \*

■ 16. Revise § 4901.16 to read as follows:

**§ 4901.16 Extensions of time.**

In unusual circumstances (as described in section 552(a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The Disclosure Officer will notify the requester in writing within the original time period of the unusual circumstances and the date when a response is expected to be sent. When the extension for a disclosure request exceeds 10 working days, the notice will provide the requester with an opportunity to modify the disclosure request or arrange an alternative time period for processing the original or modified request. This notice will also alert the requester of the availability of a PBGC FOIA Public Liaison for assistance and the Office of Government Information Services for dispute resolution services. The maximum extension for responding to an appeal is 10 working days minus the amount of any extension on the request to which the appeal relates.

■ 17. Revise § 4901.17 to read as follows:

**§ 4901.17 Expedited action on requests and appeals.**

(a) *In general.* Upon a request submitted in accordance with paragraph (b) of this section, PBGC will expedite a disclosure request under § 4901.11 or an appeal under § 4901.15 if PBGC determines that the requester has demonstrated one of the following:

(1) The disclosure request or appeal involves circumstances in which the lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual’s substantial due process rights.

(2) The requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

(b) *Timing and method of request.* A request for PBGC to expedite a disclosure request or an appeal may be made at any time and must be made by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC’s website, [www.pbgc.gov](http://www.pbgc.gov).

(c) *Action on request.* (1) PBGC will notify the requester within 10 calendar days of receipt of a request for expedited action whether PBGC will expedite a disclosure request or an appeal.

(2) *Request granted.* If PBGC determines that the request for expedited action will be granted, PBGC will take action on the disclosure request or the appeal as soon as practicable.

(3) *Request denied.* If PBGC determines that the request for expedited action will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial. The writing will also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services. PBGC will act on any appeal of that decision expeditiously.

■ 18. Add § 4901.18 to read as follows:

**§ 4901.18 Exhaustion of administrative remedies.**

If the Disclosure Officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies will be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow PBGC additional time to act as provided in FOIA, processing of the disclosure request or appeal will continue and PBGC will so advise the requester.

■ 19. Revise § 4901.21 to read as follows:

**§ 4901.21 Restrictions in general.**

(a) *Records not disclosable.* PBGC will not disclose records to the extent prohibited by section 552(b)(1) or (3) of FOIA, sections 4010 and 4043 of ERISA, or other statutes.

(b) *Records disclosure of which may be refused.* Unless prohibited from disclosure by paragraph (a) of this section, PBGC need not but may, as provided in § 4901.5(b), disclose records exempted from FOIA, which include as of [EFFECTIVE DATE OF THE FINAL RULE] records under:

(1) Section 552(b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Section 552(b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Section 552(b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Section 552(b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Section 552(b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Section 552(b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Section 552(b)(9) of FOIA, dealing in general with information about wells.

**§ 4901.22 [Amended]**

■ 20. Amend § 4901.22 by removing “shall not” and adding in its place “will not” in the first sentence, and removing “shall be” and adding in its place “will be” in the second sentence.

■ 21. Revise § 4901.23 to read as follows:

**§ 4901.23 Record of concern to agency other than PBGC.**

When reviewing a record in response to a disclosure request, PBGC will determine whether another agency is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, PBGC will proceed in one of the following ways:

(a) *Consultation with another agency.* When the record contains information of interest to another agency, PBGC will make a release determination only if its interest in the record is the primary interest and only after PBGC consults with that agency.

(b) *Referral to another agency.* (1) When an agency other than PBGC has primary interest in the record, then PBGC will refer the responsibility for responding to the disclosure request regarding that record to that agency.

(2) Whenever PBGC refers any part of the responsibility for responding to a disclosure request to another agency, PBGC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA office.

■ 22. Amend § 4901.24 by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing “submitter shall” and adding in its place “submitter must”; removing “paragraph shall” and adding in its place “paragraph will”; and removing “therefor” in paragraph (b);

■ c. Removing “disclosure officer” and adding in its place “Disclosure Officer”; removing “Counsel shall” and adding in its place “Counsel will”; and removing “requester shall” and adding in its place “requester will” in paragraph (c);

■ d. Removing “disclosure should” and adding in its place “disclosure must”; removing “subsection (b)” and adding in its place “section 552(b)”; removing “paragraph (b)(4) of FOIA” and adding

in its place “section 552(b)(4)”; removing “asserted should” and adding in its place “asserted must”; and removing “shall” and adding in its place “will” in paragraph (d);

■ e. Revising paragraph (e); and

■ f. Removing “disclosure officer” and adding in its place “Disclosure Officer”; and removing “Counsel shall” and adding in its place “Counsel will” in paragraph (f).

The revisions read as follows:

**§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to PBGC.**

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that PBGC has reason to believe contains such information, unless one of the following applies:

(1) Access to the information is denied.

(2) The information has been published or officially made available to the public.

(3) Disclosure of the information is required by law other than FOIA.

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

\* \* \* \* \*

(e) *Notification to submitter of decision to disclose.* If the Disclosure Officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the Disclosure Officer (or General Counsel) will give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification will, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy will be provided to the requester.

\* \* \* \* \*

■ 23. Amend § 4901.31 by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing “the PBGC reasonably” and adding in its place “PBGC reasonably”; removing “the PBGC will” and adding in its place “PBGC will”; and removing “will the PBGC” and



adding in its place “will PBGC” in paragraph (c); and

■ c. Revising paragraphs (d) and (e).

The revisions read as follows:

**§ 4901.31 Charges for services.**

(a) *In general.* Pursuant to the provisions of section 552 of FOIA, as amended, PBGC will assess charges to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself. Except as provided in paragraph (e) of this section, no charge for searching (or in the case of a requester described under section 552(a)(4)(A)(ii)(II) of FOIA, for duplication) will be assessed if PBGC has failed to comply with any time limit under section 552(a)(6) of FOIA.

(1) *Direct costs* means those expenditures which PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a disclosure request under FOIA and this part. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a disclosure request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required. Searches may be done manually or by computer using existing programming. Search is distinguishable from “review” which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a disclosure request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to redact them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a disclosure request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy,

audio-visual materials, or electronic records, among others.

(b) *Categories of requesters.* For purposes of assessing fees, requesters who seek access to records under FOIA and this part are divided into three categories: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* (i) When records are requested for commercial use, PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under section 552(b) of FOIA and this part.

(ii) A “commercial use” request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. PBGC’s decision to place a requester in the commercial use category will be made on a case-by-case basis dependent upon on the requester’s intended use of the information. PBGC will notify requesters of their placement in this category.

(2) *Non-commercial scientific or educational institutions, or news media requesters.* (i) When records are requested by a non-commercial scientific or educational institution or a news media requestor, PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(ii) A non-commercial scientific institution is an institution that is not operated for a “commercial use” as that term is defined in paragraph (b)(1)(ii) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) An educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. PBGC may seek verification from the requester that the request is in furtherance of scholarly research and PBGC will advise requesters of their placement in this category.

(iv)(A) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not intended to be all-inclusive. A “freelance” journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered as a representative of the news media.

(B) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media will not be considered to be a request that is for a commercial use.

(3) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b)(1) or (2) of this section, PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of search time. Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in PBGC’s systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record sought is not found.

\* \* \* \* \*

(d) *Waiver or reduction of charges.* Circumstances under which any fee listed in § 4901.32 may be waived or reduced are set forth in § 4901.34.

(e) *Unusual or exceptional circumstances.* Notwithstanding paragraph (a) of this section, if PBGC fails to comply with a time limit under section 552(a)(6) of FOIA, PBGC may nevertheless assess a charge for search and review services (or in the case of a requester described under section 552(a)(4)(A)(ii)(II), for duplication) if one of the following circumstances applies:

(1) PBGC has determined that unusual circumstances (as defined in section

552(a)(6)(B) of FOIA) apply, PBGC needs more than 10 additional days to process the disclosure request, and more than 5,000 pages are necessary to respond to the request, provided that:

(i) PBGC has provided timely written notice of this determination to the requester; and

(ii) PBGC has discussed with the requester, or made three or more good-faith attempts to do so, via written mail, electronic mail, or telephone how the requester could effectively limit the scope of the request.

(2) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC has provided timely written notice to the requester of the unusual circumstances extending the time limit by 10 additional days, and PBGC processes the disclosure request within that time.

(3) A court has determined that exceptional circumstances exist (as defined in section 552(a)(6)(C) of FOIA) and has issued an order excusing PBGC's failure to comply with the time limit.

■ 24. Amend § 4901.32 by revising paragraphs (a) and (b) to read as follows:

§ 4901.32 Fee schedule.

(a) Charges for searching and review of records. Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) Search time and review time. For ordinary search services and review services, PBGC charges \$54.00 per hour. PBGC charges fees in quarter hour increments.

(2) Retrieving records stored by NARA. For disclosure requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), PBGC charges additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) Charges for duplication of records. Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) Standard copying fee. \$0.15 for each page of record copies furnished.

(2) Voluminous material. If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the person desiring reproduction may request a special rate quotation from PBGC.

(3) Indexes. Pursuant to section 552(a)(2) of FOIA copies of indexes or

supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

\* \* \* \* \*

- 25. Amend § 4901.33 by:
■ a. Revising paragraphs (a), (b) introductory text, and (b)(1);
■ b. Removing "the PBGC may" and adding in its place "PBGC may" in paragraph (b)(2); and
■ c. Removing "The PBGC may" and adding in its place "PBGC may" in paragraph (c).

The revisions read as follows:

§ 4901.33 Payment of fees.

(a) Medium of payment. Payment of the applicable fees as provided in this section must be made by check, money, or other PBGC permitted method, and in accordance with the FOIA instructions on PBGC's website, www.pbgc.gov.

(b) Advance payment or assurance of payment. Payment or assurance of payment before work is begun or continued on a disclosure request may be required as follows:

(1) Where PBGC estimates or determines that charges allowable under the rules in this subpart, are likely to exceed \$250, PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

\* \* \* \* \*

- 26. Amend § 4901.34 by:
■ a. Removing "disclosure officer" and adding in its place "Disclosure Officer"; removing "government" and adding in its place "Government"; removing "waiver request shall" and adding in its place "waiver or reduction request must"; and removing "request for waiver" and adding in its place "request" in paragraph (a); and
■ b. Revising paragraph (b).

The revision reads as follows:

§ 4901.34 Waiver or reduction of charges.

\* \* \* \* \*

(b) If the Disclosure Officer determines that the request for fee waiver or reduction will be denied, the requester will be so advised in writing with a brief statement of the reasons for the denial. The writing will include the name and title or position of the

person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

Issued in Washington, DC, by:

Gordon Hartogenesis,
Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2020-20018 Filed 10-9-20; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2019-0010]

Washington Channel, Fort McNair, Washington, DC; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to establish a restricted area in the Washington Channel adjacent to Fort McNair. Fort McNair is the headquarters of the Army's Military District of Washington and home of the National Defense University as well as the official residence of the U.S. Army's Vice Chief of Staff. Fort McNair requested a restricted area to fulfill Joint Base Myer-Henderson Hall (JBM-HH) security needs including Marine Helicopter Squadron (HMX) missions and protection of VIP quarters at Fort McNair. On August 8, 2019, the Corps published a proposed rule for the establishment of a restricted area in the Washington Channel adjacent to Fort McNair. After evaluating the comments received in response to that proposed rule, the proposal has been revised and the Corps is inviting public comment on the revised proposed rule text.

DATES: Written comments must be submitted on or before November 12, 2020.

ADDRESSES: You may submit comments, identified by docket number COE-2019-0010, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments to docket number COE-2019-0010.

Email: david.b.olson@usace.army.mil. Include the docket number, COE-2019-0010, in the subject line of the message.