

(2) The plan would not be adversely affected by the adoption of the special rule.

After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions, or deny the application.

Previous Agency Action Involving This Plan

The Notice of Pendency explained how the Plan operates under a modification to the employer withdrawal liability rules of ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (*see* 68 FR 35463–65). Under the initial recension of the special Plan rule—which was approved in 1984 (*see* 49 FR 6043)—a complete withdrawal occurs if a contributing employer permanently ceases to have an obligation to contribute to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States; (2) resumes such work—without

renewal of the obligation to contribute—at any time before the end of the fifth Plan Year commencing after the obligation ceased; (3) sells or transfers a substantial portion of its business or assets to another person that performs such work without having an obligation to make contributions to the Plan; or (4) is found to have ceased Plan contributions in connection with the withdrawal of all, or substantially all, employers from the Plan as described in 4219(c)(1)(D) of ERISA. Parallel provisions were adopted for partial withdrawals.

Because the Plan had a substantial shortfall between assets and vested liabilities, the 1984 approval was conditioned upon the satisfaction of twin contribution tests crafted to protect Plan participants and the PBGC. First, the Plan was amended to provide that “[c]ontributions for each Plan Year shall be not less than the total administrative costs and benefits to be paid by the Trustee during the Plan Year.” Second, the Plan committed itself to satisfy a “Funding Goal” designed to ensure that the Plan accumulated sufficient assets to pay for the massive benefit promises

already made—but not yet paid for—by the bargaining parties. The Plan was required to become 50% funded within 10 years, and had to achieve 80% funding in accordance with this schedule:

Plan year	Percent
10	50
11	53
12	56
13	59
14	62
15	65
16	68
17	71
18	74
19	77
20 and over	80

As a result of these measures, the funded status of the Plan improved over the next decade, even though the bargaining parties instituted continuous benefit improvements under which the monthly benefit accruals promised under the labor contract rose by 270%, from \$26 in 1983 to \$70 in 1996. This trend is illustrated by table that the Plan presented to PBGC in 1997.

TABLE 1.—SUMMARY OF ACTUARIAL VALUATION RESULTS ¹

	Valuation date					
	7/1/96	7/1/95	7/1/94	7/1/93	7/1/92	7/1/91
Number of active participants	8,185	7,856	7,682	8,141	8,339	8,469
Number of retired participants	9,049	9,236	9,244	8,979	9,132	9,214
Monthly benefit accrual rate	70	69	69	69	39	37
Maximum monthly benefit	2,450	2,415	2,415	2,415	1,365	1,295
Contributions (000)	99,700	99,696	99,023	87,316	74,139	71,074
Benefits (000)	96,900	94,963	92,437	85,293	71,321	68,848
Market value assets (000)	1,329,082	1,143,335	957,661	950,030	835,063	746,993
Net minimum funding charges w/o credit balance (000)	79,154	85,787	81,247	80,034	47,307	43,987
Normal cost, including operating expenses (000)	20,527	19,180	17,831	18,529	12,821	12,334
Unfunded accrued liability (assets at market value) (000)	534,416	637,646	710,802	664,096	341,037	360,009
Unfunded liability—vested benefits (assets at market value) (000)	354,821	462,132	530,092	476,168	N/A	N/A
Valuation interest rate	6.5	6.5	6.5	6.5	6.5	6.5

¹ Taken from actuarial reports submitted by the Plan to PBGC in 1997.

The 1997 Amendments

In 1997, the trustees of the Plan submitted a proposed revision of their special rules to the PBGC. Their submission represented that employer contributions that equaled benefit payments and administrative expenses would exceed the limits for tax-deductibility set forth in the Internal Revenue Code. The trustees requested PBGC allow them to eliminate the contribution floor requirement, and the agency approved a modified version of the request in 1998. 63 FR 27774. Under the modification, the “annual contribution equal to annual benefit

payments” rule was waived unless the Plan became less than 85% funded; if the Plan failed the 85% Funding Goal, then employer “[c]ontributions in the following Plan Year shall be not less than the lesser of” the Plan’s benefit payments and administrative expenses or “the amount required to increase the Funding Percentage * * * to eighty-five percent (85%).” 63 FR 27777. If the Plan failed to satisfy these remedial measures, the special withdrawal liability rule would become void.

The Background of the Proposed Second Amendment

In autumn 2002, the Director of the Federal Mediation and Conciliation Service (“FMCS”) urgently requested the staff of the Secretary of Labor and the Executive Director of PBGC to provide technical comments and observations about pension-related issues to the International Longshoremen’s and Warehousemen’s Union (“ILWU”) and U.S. based representatives of the Pacific Maritime Association (“PMA”). Those parties were then negotiating a new collective bargaining agreement for west coast