

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

**Authority and Issuance:** This notice extending the comment period for the California Coast viticultural area is issued under the authority of 27 U.S.C. 205.

Signed: December 19, 2000.

**Bradley A. Buckles,**  
*Director.*

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**BILLING CODE 4810-31-P**

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4022, 4022B, 4044**

**RIN 1212-AA82**

**PBGC Benefit Payments**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The PBGC proposes to amend its regulations to make various changes in how it pays benefits, including giving participants more choices of annuity benefit forms, clarifying what it means to be able to "retire" under plan provisions for certain purposes under Title IV of ERISA, and adding rules on who will get certain payments the PBGC owes to a participant at the time of death.

**DATES:** Comments must be received on or before February 26, 2001.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC proposes to amend its regulations to address several issues under its regulations on Benefits Payable in Terminated Single-Employer Plans (part 4022), Aggregate Limits on Guaranteed Benefits (part 4022B), and Allocation of

Assets in Single-Employer Plans (part 4044).

**Form of Payment by PBGC**

The PBGC pays benefits to participants when an underfunded single-employer defined benefit plan terminates under Title IV of ERISA and the PBGC becomes trustee. If a participant's benefit is already in pay status, the PBGC continues to pay the benefit (subject to the limitations in Title IV of ERISA) in the form being paid. But for those participants whose benefits are not yet in pay status, the PBGC pays non-de minimis benefits (*i.e.*, benefits with a lump-sum value exceeding \$5,000) in the form the plan would have paid in the absence of an election, typically a joint-and-50% spousal survivor annuity (for married participants) or a straight-life annuity (for unmarried participants and married participants who, with spousal consent, waive the joint-and-survivor annuity). If a married participant dies before starting to receive benefits from the PBGC, the PBGC pays a qualified pre-retirement survivor annuity to the participant's spouse. The PBGC does not pay benefits in lump-sum form except in limited circumstances (primarily where it cashes out a de minimis benefit).

Many participants would welcome the PBGC's offering them choices of other annuity benefit forms and allowing them to designate non-spouse beneficiaries. With today's technology, it is now feasible for the PBGC to offer a menu of optional forms.

**New Benefit Options**

The PBGC proposes to revise its benefit payment regulation (part 4022) to provide participants (and beneficiaries) whose benefits are not yet in pay status with more choices of annuity benefit forms. Under new § 4022.8, the PBGC would be able to offer the following optional annuity forms: straight-life annuity, 5-year certain-and-continuous annuity, 10-year certain-and-continuous annuity, 15-year certain-and-continuous annuity, joint-and-50%-survivor annuity, joint-and-75%-survivor annuity, joint-and-100%-survivor annuity, and joint-and-50%-survivor-"pop-up" annuity (*i.e.*, an annuity form under which the participant's benefit "pops up" to the unreduced level if the beneficiary dies before the participant). The PBGC currently intends to offer all of the specified forms in all plans, regardless of whether a particular form is available under a particular plan. The PBGC would have discretion under the regulation to make available other

annuity options. The PBGC anticipates that it would exercise this discretion only with respect to all plans or a category of plans, not just with respect to a particular plan.

A participant who is married on the annuity starting date would need spousal consent to elect any of the optional forms. Either a married participant (with spousal consent) or an unmarried participant could designate a non-spouse beneficiary to receive survivor benefits under any optional joint-life or other annuity form under which payments may continue after the participant's death (*e.g.*, a 5-year certain-and-continuous annuity). In the case of a joint-life annuity, a participant could designate only a natural person (*i.e.*, a living individual, not an organization or other entity) as a beneficiary.

If a participant designated a much younger non-spouse beneficiary to receive survivor benefits under a joint-and-survivor annuity, the value of the survivor benefit might be so large relative to the value of the entire benefit that the survivor benefit would not be an "incidental death benefit" under Treas. Reg. § 1.401.1(b)(1)(i). If so, the PBGC would not pay the form elected, but would generally instead offer a modified version of that form (*e.g.*, offer a 46% survivor annuity instead of the 50% survivor annuity elected) to ensure that the death benefit would be an "incidental death benefit."

**Determination of Benefit Amounts**

The PBGC would determine the amount of the benefit in an optional form elected by a participant by first determining the annuity benefit that it would pay the participant under Title IV of ERISA in the following form:

- If the participant (regardless of marital status) elected to receive a joint-and-survivor optional form from the PBGC, the PBGC would start with the joint-and-survivor form that the plan would have paid to a married participant in the absence of an election under the plan. (The PBGC would base this starting benefit on the ages of the participant and of the participant's designated beneficiary at the annuity starting date.)
- If the participant (regardless of marital status) elected to receive a single-life optional form from the PBGC, the PBGC would start with the single-life form that the plan would have paid to an unmarried participant in the absence of an election under the plan. (For this purpose, a certain-and-continuous annuity is a single-life form.)

The PBGC would convert this starting benefit to the optional annuity form the participant or beneficiary chose, using PBGC factors based on: (1) the GAM-83 unisex mortality table currently specified for minimum lump sums

under IRC section 417(e)(3) and ERISA section 205 (see Rev. Rul. 95-6) (regardless of whether the mortality assumption is later changed under IRC section 417(e)(3) and ERISA section 205); and (2) a six percent interest rate.

Because the starting benefit would depend on whether the participant chose a joint-and-survivor optional form or a single-life optional form—rather than on whether the participant is married or unmarried—an unmarried participant who elected to receive a joint-and-survivor optional form would receive the same subsidy as a married participant who received a joint-and-survivor form. (This differs from the situation under the current regulation, where an unmarried participant does not receive any subsidy included in the form the plan would have paid, in the absence of an election, to a married participant.)

### Beneficiaries

For simplicity, this discussion refers to benefits the PBGC would pay to participants. It applies equally to benefits the PBGC would pay to beneficiaries of participants who die before entering pay status or to alternate payees with a separate interest under a qualified domestic relations order, except that such beneficiaries or alternate payees could elect only an optional single-life annuity form.

### Applicability

The PBGC would make the optional benefit forms available for benefits that are not yet in pay status as of the effective date of the amendment.

### “Earliest PBGC Retirement Date”

The earliest date a participant could “retire” under a plan can have several consequences under Title IV of ERISA:

- It can affect whether the participant’s benefit is in priority category 3 in the asset allocation scheme under ERISA section 4044. (Priority category 3 gives priority to, among others, participants who could have “retired” three years before the plan’s termination date but did not do so). See Application to Priority Category 3 Benefits.
- It governs when the participant is first eligible to be placed in pay status by the PBGC. See Application to Time of Payment.
- It is used as part of the methodology for determining the “expected retirement age” assumption the PBGC uses to value a participant’s benefit. See Application to Expected Retirement Age Assumption.

The PBGC’s determination of the earliest date a participant could “retire” under a plan can affect not only the participant for whom the determination is made, but other participants, the employer, and premium payers. Whether an earlier or later date favors

a particular interest depends on the facts and circumstances of the plan termination.

The PBGC has been making determinations about the earliest date a participant could “retire” under a plan on a case-by-case basis. In many cases, the issue is straightforward because the plan provides for early or normal retirement starting at a point (*e.g.*, early retirement at age 55) that clearly would qualify as retirement. However, because plan designs have been evolving in recent years, the PBGC anticipates that case-by-case decision-making in this area will become increasingly difficult.

A growing number of plans have been offering consensual lump sums upon separation regardless of age (*e.g.*, at age 23) and are therefore required to offer a qualified joint-and-survivor annuity commencing immediately. See Treas. Reg. § 1.417(e)-1(b). Some plans do not use the word “retirement,” even to describe a separation that commonly would be viewed as a retirement, while other plans specify “normal retirement age” as the age reached after five years of service.

The PBGC does not believe it would be appropriate to determine the earliest retirement date for PBGC purposes simply by looking at the availability of a consensual lump sum or immediate annuity or at plan labels. Doing so would treat any separation that gives rise to the availability of a consensual lump sum or immediate annuity as if it were a retirement. Among other things, this would give priority category 3 status to many participants who are not close to retirement, thereby significantly diluting priority category 3 protection for those persons Congress intended to protect.

On the other hand, where a participant is old enough or has enough service, the PBGC believes that treating a separation as a retirement would be consistent with the statutory scheme. Thus, it generally would be appropriate in a plan, such as a cash balance plan, that pays benefits upon any separation but never treats a separation before normal retirement age as a retirement, to treat some separations before normal retirement age as retirements.

To provide guidance and to reduce the need for case-by-case decision-making, the PBGC proposes to add rules on what it means to retire under plan provisions for purposes of the termination insurance program.

### Definition

The proposed regulation introduces the concept of the Earliest PBGC Retirement Date. The Earliest PBGC Retirement Date for a participant would

be the earliest date on which the participant could “retire” for certain purposes under Title IV of ERISA. It would distinguish between a participant who could receive an immediate annuity simply because he or she separated from service and a participant whose benefit is payable on account of retirement.

To help explain the Earliest PBGC Retirement Date, this preamble uses “earliest annuity date” to refer to the earliest date under plan provisions on which the participant could separate from service with the right to receive an immediate annuity, including where, as discussed above, an immediate annuity option is required because the plan provides a consensual lump sum option.

If the “earliest annuity date” is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date would be the “earliest annuity date.” For example, if the “earliest annuity date” is age 57, the Earliest PBGC Retirement Date would be the date the participant reaches age 57. However, if the “earliest annuity date” is before the date the participant reaches age 55, the Earliest PBGC Retirement Date would be the date the participant reaches age 55, unless the PBGC determines, under a facts and circumstances test, that the participant could retire on an earlier date. (The PBGC chose age 55 both because it is a common early retirement age for plans and because separation at age 55 or later is frequently viewed as retirement.)

Under the facts and circumstances test, the PBGC would consider whether the participant could retire for purposes of ERISA section 4044(a)(3)(B) (which gives priority in the asset allocation upon plan termination to the benefits of persons who retired or could have retired three years before the plan’s termination date). In making this determination, the PBGC would look at plan provisions, the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. A participant’s ability to receive an immediate annuity upon separation at a particular age or a plan’s reference to a separation from service at a particular age as a “retirement” would not be controlling. However, in no circumstances could the Earliest PBGC Retirement Date determined under the facts and circumstances be earlier than the earliest annuity date.

### Examples

- A plan’s normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon

separation before normal retirement age. The Earliest PBGC Retirement Date for a participant would be the date the participant reaches age 65.

- A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a 35-year old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could "retire" for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the earliest PBGC retirement age would be that earlier date.

- A plan's normal retirement age is age 60. The plan specifies an early retirement age of 50 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a 35-year-old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. For example, if it were common for participants to retire at age 50, the PBGC could determine that the Earliest PBGC Retirement Date for the participant would be the date the participant reaches age 50.

- A plan's normal retirement age is age 65. The plan offers an immediate annuity upon separation regardless of age and a fully-subsidized annuity upon separation with 30 years of service. The Earliest PBGC Retirement Date for a 35-year-old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that a participant could retire for purposes of ERISA section 4044(a)(3)(B) on the date the participant becomes eligible for this "30-and-out" benefit, regardless of the participant's age (e.g., the date a 48-year-old participant who started work at age 18 completes 30 years of service). If so, that date would be the participant's Earliest PBGC Retirement Date (if it is before the date the participant reaches age 55).

### Application to Priority Category 3 Benefits

The PBGC would use the Earliest PBGC Retirement Date in determining what benefits are in priority category 3 of ERISA section 4044. Under that statutory provision, plan assets available to pay benefits under a terminated plan are allocated to various priority categories. ERISA provides that the third priority category, which comes ahead of most guaranteed benefits, consists of: (1) Annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and (2) annuity

benefits that would have been in pay status as of the beginning of the three-year period if the participant had "retired" before the beginning of that 3-year period.

The existing asset allocation regulation (part 4044) describes the second eligibility test for priority category 3 protection under ERISA as "annuity benefits that could have been in pay status for participants who were eligible to receive annuity benefits" before the beginning of the 3-year period. The PBGC's longstanding interpretation of this language is that it applies only to those annuity benefits that could have been in pay status before the beginning of the 3-year period because the participant could have "retired" within the usual meaning of that word. The PBGC proposes to use the Earliest PBGC Retirement Date for purposes of determining whether a participant could have retired before the beginning of the 3-year period and thus meets the second eligibility test for priority category 3 protection.

**Applicability:** The new definition would apply to benefits in plans with termination dates on or after the effective date of the amendment. The PBGC will continue to apply its existing facts and circumstances test to benefits in plans with termination dates before the effective date of the amendment.

### Application to Time of Payment

Another area where the PBGC proposes to use the Earliest PBGC Retirement Date would be to determine when participants would first be able to receive retirement benefits in annuity form from the PBGC. Under new § 4022.10, the PBGC would make these benefits available (subject to the PBGC's rules for starting payment of benefits) to a participant starting on his or her Earliest PBGC Retirement Date or, if later, on the plan's termination date.

**Applicability:** The new rules would apply to participants who are not yet in pay status as of the effective date of the amendment.

### Application to Expected Retirement Age Assumption

Finally, the PBGC proposes to use the Earliest PBGC Retirement Date in determining a participant's "expected retirement age" assumption under the PBGC's valuation regulation (§§ 4044.55–.57). Under the current regulation, the expected retirement age assumption and, therefore, the value of a participant's benefits for purposes of ERISA section 4044 can depend on the "earliest age at which the participant can retire under the terms of the plan" (see definition of "earliest retirement

age at valuation date" in 29 CFR 4044.2). The PBGC proposes to use the participant's age at his or her Earliest PBGC Retirement Date as the age at which the participant can retire for this purpose.

**Applicability:** The new rules would apply to benefits in plans with termination dates on or after the effective date of the amendment. The PBGC will continue to apply its existing facts and circumstances test to benefits in plans with termination dates before the effective date of the amendment.

### Certain Payments Owed Upon Death

When a participant dies, the PBGC occasionally may have paid too much of the benefit or too little of the benefit that was due the participant during the participant's life. If the PBGC paid too much, there is an overpayment owed to the PBGC at the time of the participant's death. If the PBGC paid too little, there is an underpayment owed to the participant at the time of the participant's death. In either case, the PBGC needs to determine not only the amount of the overpayment or underpayment, but the person(s) it will seek to collect from or will pay.

For simplicity, this discussion refers to benefits the PBGC owes to a participant at the time of the participant's death. However, it applies equally to benefits the PBGC owes to any other person at the time of that person's death, such as a beneficiary of a deceased participant or an alternate payee.

### Where There Is a Surviving Designated Beneficiary To Receive Future Annuity Payments

The proposed amendment clarifies that, under the PBGC's recoupment and reimbursement regulation (subpart E of part 4022), the PBGC will recoup any overpayment to the participant from the person who is receiving survivor benefits under any joint-and-survivor or other annuity form under which payments may continue after the participant's death. It similarly clarifies that the PBGC will pay any underpayment due the participant to that same person.

### Where There Is No Surviving Designated Beneficiary To Receive Future Annuity Payments

Under the PBGC's current policy, if the PBGC owes benefits to a participant at the time of the participant's death and the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, the person

designated to receive survivor benefits predeceased the participant, the PBGC pays the person(s) designated with the PBGC or by or under the plan to receive benefits owed to a participant at the time of the participant's death. If there is no such designation, the PBGC generally pays those benefits to the participant's estate.

Issuing checks to estates has created difficulties for families of deceased participants and has complicated the PBGC's efforts to distribute benefits owed to a deceased participant. The PBGC has found that, in most cases, the participant has no open estate, usually because no estate was probated but occasionally because the estate was closed by the time the PBGC learns of the death and determines the amount of the underpayment.

To address these difficulties, the PBGC is proposing to add new rules to its benefit payment regulation (Part 4022) to govern who will receive benefits owed to a deceased participant where the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, the person the participant designated as a beneficiary to receive survivor benefits predeceased the participant. The new rules would apply to participant deaths on or after the date the PBGC becomes trustee of the participant's plan. They would also apply to benefits owed to participants who die before the trusteeship date if the plan administrator has not yet paid those benefits.

Under new Subpart F, the PBGC would pay those benefits to the person(s) the participant designates with the PBGC to receive those benefits or—if the participant dies within 180 days after the PBGC becomes trustee of the participant's plan and has not made a designation with the PBGC—the person(s) designated by or under the plan. In all other cases, the PBGC would pay those benefits to the person(s) surviving the participant in the following order: spouse, children, parents, estate, and next of kin.

The proposed order of payment generally follows the order of payment for death benefits used by the Thrift Savings Plan (TSP), the retirement savings plan for federal employees (see 5 USC 8433(e) and 8424(d) and 5 CFR part 1651). However, the PBGC would not be adopting the TSP rules; rather it would be establishing its own order-of-payment rules and therefore would be making its own interpretations of those rules. The PBGC notes that the proposed order of payment generally conforms to

state intestate law and believes, based on its experience, that it is also generally consistent with typical participant designations under a plan or will. The PBGC also expects that the benefit amounts that would be subject to the proposed order of payment will in most cases be relatively small.

The PBGC intends to provide a form that a participant could use to designate the person(s) to receive benefits owed to the participant at the time of the participant's death. A participant would be able to designate with the PBGC at any time on or after the date of trusteeship. The PBGC intends to provide the form as soon as practicable after trusteeship and make information about it available in newsletters to participants.

#### **Certain-and-Continuous and Similar Benefits**

The proposed amendment also addresses situations involving annuity forms that promise that, regardless of a participant's death, there will be payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity). If a person dies before receiving all required payments and there is no surviving beneficiary designated to receive those payments, the PBGC would follow the same order-of-payment rules as for a deceased participant to whom the PBGC owes benefits at the time of death.

Under its existing regulation, the PBGC may pay any annuity benefits payable to an estate in a single installment if the estate so elects; the PBGC discounts the annuity payments using the immediate interest rate it uses to calculate lump sums. The PBGC proposes instead to use the federal mid-term rate. This change is consistent with the PBGC's change from the immediate interest rate to the federal mid-term rate for crediting interest for future periods on net underpayments of benefits under its recoupment and reimbursement regulation (63 Fed. Reg. 29,353 (May 29, 1998)).

#### **Applicability**

The new rules would apply in the case of any death on or after the effective date of the amendment. For deaths before the effective date of the amendment, the PBGC would continue to follow its current rules.

#### **Entitlement Conditions Met on Termination Date**

Under the existing benefit payment regulation (part 4022), entitlement to benefits often depends on whether

certain conditions have been met before the plan's termination date. The PBGC proposes to amend the regulation to provide for entitlement also where plan conditions relating to age, length of service, disability, or death are met on the plan's termination date. Under the existing regulation, the PBGC may find entitlement in such circumstances by exercising its discretion under § 4022.4(b) and has done so in a number of cases. Because there is virtually no risk of abuse resulting from manipulation of these events, the PBGC is amending the regulation to provide for entitlement in all such cases.

The PBGC also proposes to make several related changes so that other determinations affecting guaranteed benefits take into account conditions through and including a plan's termination date: (1) An annuity payable under the terms of the plan on account of the total and permanent disability of a participant will be considered to be a "pension benefit" (and thus eligible to be guaranteed) in the case of a disability that began on or before the plan's termination date; (2) in applying the "accrued-at-normal" limitation (i.e., the limitation on guaranteed benefits to the dollar amount payable as a straight-life annuity commencing at normal retirement age), the PBGC will take into account a participant's credited service through and including the plan's termination date; and (3) the accrued-at-normal limitation will not apply to a survivor benefit payable as an annuity on account of the death of a participant that occurred before the participant retired and on or before the plan's termination date.

#### **Applicability**

The new rules would apply to benefits in any plan with a termination date on or after the effective date of the amendment. For benefits in plans with termination dates before the effective date of the amendment, the PBGC would continue to follow its current rules.

#### **Aggregate Limits on Guaranteed Benefits**

The PBGC proposes to amend its regulation on Aggregate Limits on Guaranteed Benefits (part 4022B). Under the current regulation, the PBGC aggregates benefits when applying the limitation on guaranteed benefits in § 4022.22(b) in three ways: (1) It aggregates a person's benefits under two or more plans, (2) it aggregates a person's benefits with respect to two or more participants, and (3) it aggregates benefits with respect to one participant

when more than one person is entitled to receive a benefit with respect to that participant.

Under this amendment the PBGC would not aggregate benefits with respect to two or more participants (the second type of aggregation in the previous paragraph) when applying this limitation. For example, suppose a participant is entitled to a \$2,500 monthly benefit in her own right and another \$1,000 survivor benefit with respect to her deceased husband who was covered under the same plan (or another PBGC-trusted plan). Assume for simplicity the maximum guaranteeable monthly benefit is \$3,000. Under the current rule, the participant's total benefit would be limited to a monthly benefit of \$3,000. Under the amendment, the participant would be entitled to the full \$3,500 benefit.

(Under § 4022.22 of this chapter, the PBGC will continue to aggregate benefits with respect to one participant when more than one person is entitled to receive a benefit with respect to that participant.)

#### Applicability

The new rules would apply to benefit determinations that become effective on or after the effective date of the final rule.

#### Miscellaneous

The amendment also makes conforming, clarifying, and editorial changes to the existing regulations. For example, the amendment clarifies that:

- For purposes of phasing in the guarantee of benefit increases, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes a year. The amendment makes similar conforming changes to the rules governing what benefits are in priority category 3.
- In determining whether it may pay a benefit in a lump sum, the PBGC may apply the \$5,000 threshold to an estimated benefit and, in certain circumstances, to a portion of a benefit that remains to be paid.

#### Paperwork Reduction Act

The PBGC is submitting the information requirements contained in this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act of 1995. Persons may obtain copies of the PBGC's request free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202-326-4020.

The proposed rule makes clear that the PBGC is not required to accept any application for benefits not made in

accordance with its forms and instructions. The existing benefit application forms and instructions were approved through November 30, 2002, under control number 1212-0055 (Locating and Paying Participants). The PBGC has made changes (related to the proposed rule) in the existing forms and instructions.

The PBGC needs the information required to be submitted to enable it to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program.

The PBGC estimates that 71,250 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 46,250 hours (an average of slightly less than 40 minutes per individual) and \$24,225. The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact under the PBGC's Pension Search program and that the associated burden is 1,500 hours (an average of about 15 minutes per individual) and \$1,020. Thus, the total estimated annual burden associated with this collection of information is 47,750 hours and \$25,245.

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. 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.

#### Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this proposed rule would not have

a significant economic impact on a substantial number of small entities. Virtually all of the changes in the proposed rule would affect only the PBGC and persons who receive benefits from the PBGC. The only change that could affect small entities is the proposed application of the Earliest PBGC Retirement Date to the "expected retirement age" assumption under the PBGC's valuation regulation. Although this change potentially could affect employer liability, in most cases, the results of a valuation would match the results under the PBGC's current regulation. In those cases where the valuation results would not match, the differences generally would not be significant. Thus, the change would not have a significant economic impact on a substantial number of entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

#### List of Subjects in 29 CFR Parts 4022, 4022B, and 4044

Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend parts 4022, 4022B, and 4044 of 29 CFR chapter LX as follows:

#### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for Part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

##### § 4022.4 [Amended]

2. Amend paragraph (a)(3) of § 4022.4 by adding the words "(or, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die, on or before the termination date)" after the words "Except for a benefit described in paragraph (a)(2) of this section, before the termination date", and the words "(or, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die, prior to or on such date)" after the words "the right to receive the benefit prior to such date".

##### § 4022.6 [Amended]

3. Amend paragraph (a) of § 4022.6 by adding the words "on or" before the words "before the termination date".

##### § 4022.7 [Amended]

4. Amend § 4022.7 by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iv), and (d), and republishing the introductory text of paragraph (b)(1) to read as follows:

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit (or of an estimated benefit) payable by the PBGC is \$5,000 or less and the benefit is not yet in pay status, the benefit (or estimated benefit) may be paid in a lump sum.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraphs (b)(1)(i) and the monthly benefit (or the estimated monthly benefit) is equal to or greater than \$25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC will provide the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a qualified preretirement survivor annuity (or of an estimated qualified preretirement survivor annuity) is \$5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit (or estimated benefit) may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Payments to estates.* The PBGC may pay any annuity payments payable to an estate in a single installment without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The PBGC will discount the annuity payments using the federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) applicable for the month the participant died based on monthly compounding.

\* \* \* \* \*

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1) of this section—

(1) *Benefits disregarded.* In determining whether the lump-sum value of a benefit is \$5,000 or less, the PBGC may disregard the value of any benefits the plan or the PBGC previously paid in lump-sum form or the plan paid by purchasing an annuity contract, the value of any benefits returned under paragraph (b)(2) of this section, and the value of any benefits the PBGC has not yet determined under section 4022(c) of ERISA.

(2) *Actuarial assumptions.* The PBGC will calculate the lump sum value of a benefit by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used will be those described in § 4044.52, except that—

(i) *Loading for expenses.* There will be no adjustment to reflect the loading for expenses;

(ii) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part will apply; and

(iii) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

5. Add § 4022.8 to read as follows:

**§ 4022.8 Form of payment.**

(a) *In general.* This section applies where benefits are not already in pay status. Except as provided in § 4022.7 (relating to the payment of lump sums), the PBGC will pay benefits—

(1) In the automatic PBGC form described in paragraph (b) of this section; or

(2) If an optional PBGC form described in paragraph (c) of this section is elected, in that optional form.

(b) *Automatic PBGC form.*

(1) *Married participants.* The automatic PBGC form with respect to a participant who is married at the time the benefit enters pay status is the form a married participant would be entitled to receive from the plan in the absence of an election.

(2) *Unmarried participants.* The automatic PBGC form with respect to a participant who is unmarried at the time the benefit enters pay status is the form an unmarried person would be entitled to receive from the plan in the absence of an election.

(3) *QPSA beneficiaries.* The automatic PBGC form with respect to the spouse of a married participant in a plan with a termination date on or after August 23, 1984, who dies before beginning to receive benefits from the PBGC is the qualified preretirement survivor annuity such a spouse would be entitled to receive from the plan in the absence of an election. The PBGC will not charge the participant or beneficiary for this survivor benefit coverage for the time period beginning on the plan's termination date (regardless of whether the plan would have charged).

(4) *Alternate payees.* The automatic PBGC form with respect to an alternate payee with a separate interest under a qualified domestic relations order is the form an unmarried participant would be entitled to receive from the plan in the absence of an election.

(c) *PBGC optional forms.*

(1) *Participant and beneficiary elections.* A participant may elect any

optional form described in paragraph (c)(4) or (c)(5) of this section. A beneficiary of a participant who dies before entering pay status or an alternate payee with a separate interest under a qualified domestic relations order may elect any optional form described in paragraph (c)(4) of this section. Once a benefit is in pay status, the benefit form cannot be changed.

(2) *Permitted designees.* A participant or beneficiary, whether married or unmarried, who elects an optional form with a survivor feature (e.g., a 5-year certain-and-continuous annuity or a joint-and-50%-survivor annuity) may designate a non-spouse beneficiary to receive survivor benefits. A non-spouse beneficiary under an optional joint-life form must be a natural person.

(3) *Spousal consent.* In the case of a participant who is married at the time he or she enters pay status, the election of an optional form or designation of a non-spouse beneficiary is valid only if the participant's spouse consents in writing.

(4) *Permitted optional single-life forms.* The PBGC may offer benefits in the following single-life forms:

(i) A straight-life annuity;

(ii) A 5-year certain-and-continuous annuity;

(iii) A 10-year certain-and-continuous annuity; and

(iv) A 15-year certain-and-continuous annuity.

(5) *Permitted joint-life forms.* The PBGC may offer benefits in the following joint-life forms:

(i) A joint-and-50%-survivor annuity;

(ii) A joint-and-50%-survivor-“pop-up” annuity (i.e., where the participant's benefit “pops up” to the unreduced level if the beneficiary dies first);

(iii) A joint-and-75%-survivor annuity; and

(iv) A joint-and-100%-survivor annuity.

(6) *Determination of benefit amount; starting benefit.* To determine the amount of the benefit in a PBGC optional form—

(i) *Single-life forms.* In the case of a PBGC optional form under paragraph (c)(4) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to an unmarried participant in the absence of an election; and

(ii) *Joint-life forms.* In the case of a PBGC optional form under paragraph (c)(5) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to a married participant in the absence of an election. For this purpose, the PBGC will treat a participant who designates

a non-spouse beneficiary as being married to a person who is the same age as that non-spouse beneficiary.

(7) *Determination of benefit amount; conversion factors.* The PBGC will convert the benefit amount determined under paragraph (c)(6) of this section to the optional form elected, using PBGC factors based on—

(i) *Mortality.* Unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95-6, 1995-1 C.B. 80 (Internal Revenue Service Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington DC 20402); and

(ii) *Interest.* An interest rate of six percent.

(8) *Incidental benefits.* The PBGC will not pay a PBGC optional form with a death benefit (e.g., a joint-and-50%-survivor annuity) unless the death benefit would be an “incidental death benefit” under 26 CFR 1.401-1(b)(1)(i). If the death benefit would not be an “incidental death benefit,” the PBGC may instead offer a modified version of the optional form under which the death benefit would be an “incidental death benefit.”

(d) *PBGC discretion.* The PBGC may make other optional annuity forms available subject to the rules in paragraph (c) of this section.

6. Add § 4022.9 to read as follows:

**§ 4022.9 Time of payment; benefit applications.**

(a) *Time of payment.* A participant may start receiving an annuity benefit from the PBGC (subject to the PBGC's rules for starting benefit payments) on his or her Earliest PBGC Retirement Date as determined under § 4044.13(b) or, if later, the plan's termination date.

(b) *Benefit applications.* The PBGC is not required to accept any application for benefits not made in accordance with its forms and instructions.

**§ 4022.21 [Amended]**

7. Amend § 4022.21 as follows:

a. In paragraph (a)(2)(i), remove the words “before the plan terminates and before the participant retired” and add in their place the words “on or before the plan's termination date and before the participant retired”;

b. Amend paragraph (d) by removing the words “benefit payable to other than natural persons, or a trust or estate” and adding in their place the words “joint life annuity benefit except if it is payable to or”

**§ 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.**

8. Amend § 4022.25 by revising paragraphs (c) and (d) as follows:

\* \* \* \* \*

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

\* \* \* \* \*

9. Add paragraph (d) to § 4022.81 to read as follows:

**§ 4022.81 General rules.**

\* \* \* \* \*

(d) Death of participant.

(1) *Benefit overpayments.* If the PBGC determines that, at the time of a participant's death, there was a net overpayment to the participant, and the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC, in accordance with paragraph (a) of this section, will recoup the overpayment from the person who is receiving survivor benefits.

(2) *Benefit underpayments.* If the PBGC determines that, at the time of a participant's death, there was a net underpayment to the participant—

(i) *Surviving designated beneficiary to receive future annuity payments.* If the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC will pay the underpayment to the person who is receiving survivor benefits.

(ii) *No surviving designated beneficiary to receive future annuity payments.* If the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, there is no person designated to receive survivor benefits or the person designated to receive survivor benefits predeceased the participant, the PBGC will pay the underpayment to the person determined under the rules in subpart F of this part.

10. Add subpart F to part 4022 to read as follows:

**Subpart F—Certain Payments Due Upon Death**

Sec.

4022.91 When do these rules apply?

4022.92 What definitions do I need to know for these rules?

4022.93 Who will get benefits the PBGC may owe me at the time of my death?

4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?

4022.95 Whom does the PBGC pay when payments under certain-and-continuous and similar annuities are owed upon a person's death?

**§ 4022.91 When do these rules apply?**

(a) *Benefits we may owe you at the time of your death.*

(1) *Timing.* These rules apply if you die—

(i) On or after the date we take over your plan (as trustee); or

(ii) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid all benefits owed to you at the time of your death.

(2) *Types of benefits.* These rules apply to any benefits we may owe you at the time of your death, such as a payment of a lump-sum benefit that we calculated as of your plan's termination date but had not yet paid you or a correction for monthly underpayments.

(3) *Benefit form.* These rules apply if your benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after your death or, although your benefit is in that form, the person you designated to receive those payments died before you. (If any part of your benefit is in that form, and the person you designated to receive those payments survives you, we will make up any underpayment to you at the time of your death by paying it to that person, under the rule in § 4022.81(d)(2)(i) of this part.)

(4) *Effect of plan or will.* These rules apply regardless of any contrary provision in a plan or will.

(b) *Certain-and-continuous and similar payments.* These rules also apply in certain circumstances to payments we owe when a person dies without having received all required payments under a “certain-and-continuous” or similar form of annuity. See § 4022.95.

**§ 4022.92 What definitions do I need to know for these rules?**

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

“We” means the PBGC.



“You” means the person to whom we may owe benefits at the time of death.

**§ 4022.93 Who will get benefits the PBGC may owe me at the time of my death?**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section (which explain what happens if you die before the date we take over your plan or within 180 days after the date we take over your plan), we will pay any benefits we owe you at the time of your death to the person(s) surviving you in the following order—

(1) *Designee with the PBGC.* The person(s) you designated with us to get any benefits we may owe you at the time of your death. See § 4022.94 for information on designating with us.

(2) *Spouse.* Your spouse. We will consider a person to whom you are married to be your spouse even if you and that person are separated, unless a decree of divorce or annulment has been entered in a court.

(3) *Children.* Your children and descendants of your deceased children. A child includes an adopted child. If one of your children dies before you, any descendants of that deceased child at the same level will equally divide that deceased child's share.

(4) *Parents.* Your parents. A parent includes an adoptive parent.

(5) *Estate.* Your estate, provided your estate is open and there is an executor or administrator of your estate at the time we pay those benefits.

(6) *Next of kin.* Your next of kin.

(b) *Pre-trusteeship deaths.* If you die before the date we take over your plan and, by that date, the plan administrator has not paid all benefits owed to you at the time of your death, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits). If there is no such designation, we will pay those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a)(2) through (a)(6) of this section.

(c) *Deaths shortly after trusteeship.* If you die within 180 days after the date we take over your plan and you have not designated anyone with the PBGC under paragraph (a)(1) of this section, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits) before paying those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a)(2) through (a)(6) of this section.

**§ 4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?**

(a) *When you may designate.* At any time on or after the date we take over your plan, you may designate with us who will get any benefits we owe you at the time of your death.

(b) *Information on how you may designate.* Shortly after the date we take over your plan, we will provide you with information on how you can designate with us. If you want this information earlier, you should contact us at the PBGC customer service center. You may also want to contact us for this information if—

(1) We took over your plan before [INSERT FIRST DAY OF MONTH PRECEDING MONTH OF PUBLICATION OF FINAL RULE IN **Federal Register**]; or

(2) You believe we might owe you benefits as a designee or payee under these rules.

(c) *Change of designee.* If you want to change the person(s) you designate with us, you must submit another designation to us.

(d) *If your designee dies before you.*

(1) *In general.* If the person(s) you designate with us dies before you or at the same time as you, we will treat you as not having designated anyone with us (unless you named an alternate designee who survives you). Therefore, you should keep your designation with us current.

(2) *Simultaneous deaths.* If you and a person you designated die as a result of the same event, we will treat you and that person as having died at the same time, provided you and that person die within 30 days of each other.

**§ 4022.95 Whom does the PBGC pay when payments under certain-and-continuous and similar annuities are owed upon a person's death?**

If a person dies without having received all required payments under a form of annuity that promises that, regardless of a participant's death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity), and there is no surviving beneficiary designated to receive such payments, we will pay the remaining benefits to the person determined under the rules in §§ 4022.91 through 4022.94.

**PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS**

11. The authority citation for part 4022B is added to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1322B.

12. Revise § 4022B.1 to read as follows:

**§ 4022B.1 Aggregate payments limitation.**

(a) *Benefits with respect to two or more plans.* If a person (or persons) is entitled to benefits payable with respect to one participant in two or more plans, the aggregate benefits payable by PBGC from its funds is limited by § 4022.22 of this chapter (without regard to § 4022.22(a)). The PBGC will determine the limitation as of the date of the last plan termination.

(b) *Benefits with respect to two or more participants.* The PBGC will not aggregate the benefits payable with respect to one participant with the benefits payable with respect to any other participant (e.g., if an individual is entitled to benefits both as a participant and as the spouse of a deceased participant).

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

15. The authority citation for Part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

**§ 4044.2 [Amended]**

14. In § 4044.2(b), amend the definition of *Earliest retirement age at valuation date* by removing the words “earliest age at which the participant can retire under the terms of the plan” and adding in their place the words “participant's attained age as of his or her Earliest PBGC Retirement Date (as determined under § 4044.13(b) of this chapter)”.

15. Revise § 4044.13 to read as follows:

**§ 4044.13 Priority category 3 benefits.**

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status for participants who, before the beginning of the 3-year period ending on the termination date, were eligible to receive annuity benefits and had reached their Earliest PBGC Retirement Date (as determined in paragraph (b) of this section based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date). Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (c)(5)



of this section, shall be included in determining the priority category 3 benefit. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 of this chapter.

(b) *Earliest PBGC Retirement Date.* The Earliest PBGC Retirement Date for a participant is the earliest date on which the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA. The Earliest PBGC Retirement Date is determined in accordance with this paragraph (b). For purposes of this paragraph (b), "age" means the participant's age as of his or her last birthday (unless otherwise required by the context).

(1) *Immediate annuity at or after age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the earliest date on which the participant could separate from service with the right to receive an immediate annuity.

(2) *Immediate annuity before age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is before the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the date the participant reaches age 55 (except as provided in paragraph (b) (3) of this section).

(3) *Facts and circumstances.* If a participant could separate from service with the right to receive an immediate annuity before the date the participant reaches age 55, the PBGC may determine, under the facts and circumstances, that the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA on an earlier date, in which case that earlier date is the Earliest PBGC Retirement Date for the participant. In making this determination, the PBGC will take into account plan provisions (e.g., the general structure of the provisions, the extent to which the benefit is subsidized, and whether eligibility for the benefit is based on a substantial service or age-and-service requirement), the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. Neither a plan's reference to a separation from service at a particular age as a "retirement" nor the ability of

a participant to receive an immediate annuity at a particular age necessarily makes the date the participant reaches that age the Earliest PBGC Retirement Date for the participant. The Earliest PBGC Retirement Date determined by the PBGC under this paragraph (b)(3) will never be earlier than the earliest date the participant could separate from service and with the right to receive an immediate annuity.

(4) *Special rule for "window" provisions.* For purposes of this paragraph (b), the PBGC will treat a participant as having been able, under plan provisions, to separate from service with the right to receive an immediate annuity on a date before the plan's termination date only if eligibility for that immediate annuity continues through the plan's termination date.

(c) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to each participant is the lowest annuity that was paid or payable under the rules in paragraphs (c)(2) through (c)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the termination date.

(ii) Before the beginning of the 3-year period ending on the termination date, the participant was eligible for an annuity benefit that could have been in pay status and had reached his or her Earliest PBGC Retirement Date (as determined in paragraph (b) of this section, based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date). Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in the next sentence, for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the termination date, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit commenced. Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (c)(5) of this section, shall be included in determining the priority category 3 benefit. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) For a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the termination date but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (c)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination

date, computed in accordance with paragraph (c)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective on or before the first day of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (c)(3) of this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is "in effect" on the later of the date on which it is adopted or the date it becomes effective.

Issued in Washington, DC, this day of December, 2000.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00-32706 Filed 12-22-00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Chapter II

#### Review of Existing Regulations

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Review of regulations; request for comment.

**SUMMARY:** MMS has been performing annual reviews of its significant regulations and asking the public to participate in these reviews since 1994.

The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective, or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised because they are either unclear, inefficient, or interfere with normal market conditions. As MMS moves towards performance based regulations, we are looking at ways to offer regulatory relief to industry for exceptional performance. We request your comments and suggestions with respect to which regulations could be more performance based and less prescriptive.

The purpose of this document is twofold. First, we want to provide the public an opportunity to comment on MMS regulations that should be eliminated or revised, or could be more performance based. Second, we are providing a status update of the actions MMS has taken on comments previously received from the public in response to documents published March 1, 1994; March 28, 1995; May 20, 1996; April 24, 1997; June 12, 1998; and June 7, 1999. We will only include in this document status updates on comments which have not been closed or implemented in the six previous status update documents listed above.

**DATES:** Written comments must be received by February, 26, 2001.

**ADDRESSES:** Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4230; 1849 C Street NW.; Washington, DC 20240; Attention: Elizabeth Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Montgomery, Policy and Management Improvement, telephone: (202) 208-3976; Fax: (202) 208-4891; and E-Mail: Elizabeth.Montgomery@mms.gov.

**SUPPLEMENTARY INFORMATION:** MMS began a review of its regulations in early 1994 under the directives contained in the President's Executive Order 12866. The Executive Order calls for periodic regulatory reviews to ensure that all significant regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the agency's objectives and Presidential priorities.

We invited the public to participate in the regulatory review. The invitation was sent out via different media, namely a **Federal Register** document dated March 1, 1994 (59 FR 9718); MMS and independent publications; and public

speeches by MMS officials during that time.

MMS received approximately 40 public comments which were almost equally divided between its Minerals Revenue Management (formerly Royalty Management Program) and Offshore Minerals Management Programs. We acknowledged the comments in a July 15, 1994 (59 FR 36108), document and set forth our planned actions to address the comments, along with an estimated timetable for these actions.

In the **Federal Register** notices published March 28, 1995 (60 FR 15888); May 20, 1996 (61 FR 25160); April 24, 1997 (62 FR 19961); June 12, 1998 (63 FR 32166); and June 7, 1999 (65 FR 30267), MMS: (a) Asked for further public comments on its regulations, and (b) provided a status update of actions it had taken on the major public comments received to date. We received 10 responses from the 1995 document, 5 responses from the 1996 document, 2 responses from the 1997 document, 3 responses from the 1998 document, and 3 responses from the 1999 document. A number of the commentators expressed appreciation for our streamlining efforts and responsiveness to suggestions from our regulated customers.

This document updates our planned actions and related timetables on the major comments received to date. It also solicits additional comments from the public concerning regulations that should be either eliminated or revised, or could be more performance based. Since some of the public responses received in response to prior documents contained comments on very specific and detailed parts of the regulations, this document does not address every one received. For information on any comment submitted which is not addressed in this document, please contact Mrs. Montgomery at the number and location stated in the forward sections of this document.

MMS regulations are found at Title 30 in the Code of Federal Regulations. Parts 201 through 243 contain regulations applicable to MMS's Minerals Revenue Management, Parts 250 through 282 are applicable to MMS's Offshore Minerals Management; and Part 290 is applicable to Administrative Appeals.

#### Status Report

The following is a status report by program area on the comments MMS has received, to date, on its regulations.

##### A. Offshore Minerals Management (OMM) Program

OMM is currently reviewing the following areas of OMM regulations: