

the form of a life annuity beginning at age 65. This amendment updates Appendix D to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2004. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of \$3,698.86 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2004 maximum guaranteed benefit amounts. Plan administrators may, subject to the

requirements of that regulation, include this information in participant notices.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2004 maximum guaranteeable benefit amounts for the information of the public.

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

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

## List of Subjects

### 29 CFR Part 4011

Employee benefit plans.  
Pension insurance, Reporting and recordkeeping requirements.

### 29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

## PART 4011—DISCLOSURE TO PARTICIPANTS

■ 1. The authority citation for part 4011 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1311.

■ 2. Appendix B to part 4011 is amended by adding a new entry in numerical order to the table to read as follows.

### APPENDIX B TO PART 4011.—TABLE OF MAXIMUM GUARANTEED BENEFITS

| The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below: |            |             |            |             |            |             |            |             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
| If a plan terminates in—                                                                                                                              | Age 65     |             | Age 62     |             | Age 60     |             | Age 55     |             |
|                                                                                                                                                       | Monthly    | Annual      | Monthly    | Annual      | Monthly    | Annual      | Monthly    | Annual      |
| 2004 .....                                                                                                                                            | \$3,698.86 | \$44,386.32 | \$2,922.10 | \$35,065.20 | \$2,404.26 | \$28,851.12 | \$1,664.49 | \$19,973.88 |

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

■ 3. 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.

■ 4. Appendix D to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

### Appendix D to Part 4022.—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

| Year       | Maximum guaranteeable monthly benefit |
|------------|---------------------------------------|
| 2004 ..... | 3,698.86                              |

Issued in Washington, DC, this 21st day of November, 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4044

### Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2004, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

**EFFECTIVE DATE:** January 1, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may 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's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans

covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at

unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II-A, II-B, and II-C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I-03 with Table I-04 in order to provide an updated correlation, appropriate for calendar year 2004, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-04 will be used to value benefits in plans with valuation dates during calendar year 2004.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation

date in 2004, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2004.

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

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

#### List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

#### PART 4044—[AMENDED]

■ 1. The authority citation for part 4044 continues to read as follows:

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

■ 2. Appendix D to part 4044 is amended by removing Table I-03 and adding in its place Table I-04 to read as follows:

#### Appendix D to Part 4044.—Tables Used To Determine Expected Retirement Age

TABLE I-04.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 2003, and before January 1, 2005]

| Participant reaches URA in year— | Participant's Retirement Rate Category is—               |                                                  |       |                                                              |
|----------------------------------|----------------------------------------------------------|--------------------------------------------------|-------|--------------------------------------------------------------|
|                                  | Low <sup>1</sup> if monthly benefit at URA is less than— | Medium <sup>2</sup> if monthly benefit at URA is |       | High <sup>3</sup> if monthly benefit at URA is greater than— |
|                                  |                                                          | From                                             | To    |                                                              |
| 2005 .....                       | 473                                                      | 473                                              | 2,000 | 2,000                                                        |
| 2006 .....                       | 483                                                      | 483                                              | 2,042 | 2,042                                                        |
| 2007 .....                       | 494                                                      | 494                                              | 2,087 | 2,087                                                        |
| 2008 .....                       | 505                                                      | 505                                              | 2,133 | 2,133                                                        |
| 2009 .....                       | 516                                                      | 516                                              | 2,182 | 2,182                                                        |
| 2010 .....                       | 528                                                      | 528                                              | 2,233 | 2,233                                                        |
| 2011 .....                       | 540                                                      | 540                                              | 2,284 | 2,284                                                        |
| 2012 .....                       | 553                                                      | 553                                              | 2,336 | 2,336                                                        |
| 2013 .....                       | 566                                                      | 566                                              | 2,390 | 2,390                                                        |
| 2014 or later .....              | 579                                                      | 579                                              | 2,445 | 2,445                                                        |

<sup>1</sup> Table II-A.

<sup>2</sup> Table II-B.

<sup>3</sup> Table II-C.

\* \* \* \* \*

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**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-091-FOR]

#### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are announcing our approval of an amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment we are approving consists of changes to the West Virginia Surface Mining Reclamation Rules as contained in House Bill 2663. The amendment is intended to improve the operational efficiency of the West Virginia program.

**EFFECTIVE DATE:** December 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158. Internet: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the West Virginia Program

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

#### II. Submission of the Amendment

By letter dated May 2, 2001 (Administrative Record Number WV-1209), the West Virginia Department of Environmental Protection (WVDEP) submitted a proposed amendment to the West Virginia program. The program amendment consists of changes to the West Virginia Surface Mining Reclamation Rules at Code of State Regulations (CSR) 38-2, as amended by House Bill 2663.

We announced receipt of the proposed amendment in the May 24, 2001, **Federal Register** (66 FR 28682). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV-1213). The public comment period closed on June 25, 2001. At the request of two commenters, we extended the comment period through July 13, 2003 (Administrative Record Numbers WV-1222 and WV-1223). We received comments from four environmental organizations and two Federal agencies.

We did not request comments on the proposed changes to CSR 38-2-3.14.b.12, concerning the partial removal of coal processing refuse piles, because that activity pertains to the removal of coal refuse that does not meet the definition of coal. In 1990, we stated that "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" set forth in 30 CFR 700.5; *i.e.*, ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314; May 23, 1990. Therefore, it is not subject to regulation under SMCRA, and will not be considered here. We note that the removal of abandoned coal refuse piles was the subject of a later amendment that was addressed in a final rule notice published in the May 1, 2002, **Federal**

**Register** (67 FR 21920) (Administrative Record Number WV-1300).

In the proposed rule notice published on May 24, 2001, we incorrectly stated that the definition of "cumulative impact area" at CSR 38-2-2.39 is new and subject to public comment. The definition of "cumulative impact area" is not new, and is already part of the approved West Virginia program.

On July 1, 2003, WVDEP sent us a letter containing clarification concerning the proposed deletion of the definition of "cumulative impact," the addition of a definition of "material damage to the hydrologic balance outside the permit areas," and the addition of a provision qualifying certain coal removal during reclamation as government-financed construction that is exempt from a permit (Administrative Record Number WV-1365). The State's July 1, 2003, letter was in response to questions that we posed in a list dated February 26, 2003 (Administrative Record Number WV-1365). We announced receipt of the State's clarification letter in the **Federal Register** on July 31, 2003 (68 FR 44910). In the same document, we reopened the comment period to provide the public an opportunity to review and comment on the State's letter and whether the amendment, as further clarified in the State's letter dated July 1, 2003, satisfies the applicable program approval criteria of 30 CFR 732.15 (Administrative Record Number WV-1369). The public comment period closed on August 15, 2003. At the request of a Federal agency, we extended the public comment period through August 29, 2003 (Administrative Record Number WV-1371). We received comments from three environmental organizations and two Federal agencies.

Several of the proposed changes to the West Virginia regulations that were submitted as part of this amendment were intended to address required program amendments codified in the Federal regulations at 30 CFR 948.16(xx), (qqq), (zzz), (fff), (ggg), (hhh), (jjj), (nnn) and (ppp). We expedited our review of the specific amendments relating to those required amendments and published our decisions on them in the **Federal Register** on May 1, 2002 (67 FR 21904). Specifically, our findings on the following provisions that were submitted with this amendment and were addressed in our May 1, 2002, decision include: CSR 38-2-14.8.a.6 (948.16(xx)); CSR 38-2-12.2.e (948.16(qqq)); CSR 38-2-3.12.a.1 (948.16(zzz)); CSR 38-2-16.2.c.4 (948.16(fff)); CSR 38-2-16.2.c.4 (948.16(ggg)); CSR 38-2-16.2.c.4