

*Example 8. Annuity with partial commutation feature.* (i) The facts are the same as in *Example 7* except that the annuity provides Z4 may request, at any time before Z4 attains age 84, an ad hoc payment on his next payment due date with future payments reduced by an amount equal to the ad hoc payment divided by the factor obtained from Table M (from *Example 7*) corresponding to Z4's age at the time of the ad hoc payment. Because, at each age, the factors in Table M are less than the corresponding life expectancies in the Single Life Table in A-1 of § 1.401(a)(9)-9, total future expected payments under Contract Y4 will decrease after an ad hoc payment. Thus, ad hoc distributions received by Z4 from Contract Y4 will satisfy the requirements under paragraph (c)(4) of this A-4.

(ii) As an illustration of paragraph (i) of this *Example 8*, if Z4 were to request, on the day before he was to attain age 84, an ad hoc payment of \$100,000 on his next payment due date, his recalculated annual payment amount would be reduced to \$27,500. This amount is determined as \$40,000 (the amount of Z4's next annual payment) reduced by \$12,500 (his \$100,000 ad hoc payment divided by the Table M factor at age 84 of 8.0). Thus, Z4's total future expected payments after the ad hoc payment (and including the ad hoc payment) are equal to \$322,750 (\$100,000 plus \$27,500 multiplied by the Single Life Table value of 8.1). Note that this \$322,750 amount is less than the amount of Z4's total future expected payments before the ad hoc payment (\$324,000, determined as \$40,000 multiplied by 8.1), and the requirements under paragraph (c)(4) of this A-4 are satisfied.

*Example 9. Annuity with excessive increases.* (i) A retired participant (Z5) in defined contribution plan X attains age 70½ in 2005. Z5 elects to purchase annuity Contract Y5 from Insurance Company W in 2005 with a premium of \$1,000,000. Contract Y5 is a single life annuity contract with a 20-year period certain. Contract Y5 provides for an initial payment of \$200,000, a second payment one year from the time of purchase of \$40,000, and 18 succeeding annual payments each increasing at a constant percentage rate of 4.5 percent from the preceding payment.

(ii) Contract Y5 fails to meet the requirements of section 401(a)(9) because the total future expected payments without regard to any increases in the annuity payment, calculated as \$200,000 in year one and \$40,000 in each of years two through twenty, is only \$960,000 (*i.e.*, an amount that does not exceed the total value used to purchase the annuity).

Q-15: Are there special rules applicable to payments made under a defined benefit plan or annuity contract to a surviving child?

A-15: Yes, pursuant to section 401(a)(9)(F), payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving

spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. For purposes of the preceding sentence, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of section 72(m)(7) when the child reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled. Thus, when payments described in this paragraph A-15 become payable to the surviving spouse because the child attains the age of majority, recovers from a disabling illness, dies, or completes a specified course of education, there is not an increase in benefits under A-1 of this section. Likewise, the age of child receiving such payments is not taken into consideration for purposes of the minimum incidental benefit requirement of A-2 of this section.

Q-16: Will a governmental plan within the meaning of section 414(d) fail to satisfy section 401(a)(9) if annuity payments under the plan do not satisfy this section?

A-16: (a) Except as provided in paragraph (b) of this A-16, annuity payments under a governmental plan within the meaning of section 414(d) must satisfy this section.

(b) In the case of an annuity distribution option provided under the terms of a governmental plan as in effect on April 17, 2002, the plan will not fail to satisfy section 401(a)(9) merely because the annuity payments do not satisfy the requirements A-1 through A-15 of this section, provided the distribution option satisfies section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9).

Q-17: What are the rules for determining required minimum distributions for defined benefit plans and annuity contracts for calendar years 2003, 2004, and 2005?

A-17: A distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy A-1 through A-16 of this section, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9). For governmental plans, this reasonable good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan

that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

#### § 1.401(a)(9)-6T [Removed]

■ **Par. 4.** Section 1.401(a)(9)-6T is removed.

■ **Par. 5.** In § 1.401(a)(9)-8 A-2, the first sentence in paragraph (a)(2) is revised to read as follows:

#### § 1.401(a)(9)-8 Special rules.

\* \* \* \* \*

A-2(a) \* \* \*  
(2) If the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). \* \* \*

\* \* \* \* \*  
Approved: June 1, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04-13475 Filed 6-14-04; 8:45 am]

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2004. Interest assumptions

are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** July 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, 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 regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2004, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in

plans with valuation dates during July 2004, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.50 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent an increase (from those in effect for June 2004) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for June 2004.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation

and payment of benefits in plans with valuation dates during July 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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 amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

29 CFR Part 4022

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

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended 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.

■ 2. In appendix B to part 4022, Rate Set 129, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i <sub>1</sub>	i <sub>2</sub>	i <sub>3</sub>	n <sub>1</sub>	n <sub>2</sub>
* 129	* 7-1-04	* 8-1-04	* 3.50	* 4.00	* 4.00	* 4.00	* 7	* 8

■ 3. In appendix C to part 4022, Rate Set 129, as set forth below, is added to the

table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i <sub>1</sub>	i <sub>2</sub>	i <sub>3</sub>	n <sub>1</sub>	n <sub>2</sub>
*	*	*	*	*	*	*	*	*
129	7-1-04	8-1-04	3.50	4.00	4.00	4.00	7	8

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

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

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

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the

table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of i <sub>t</sub> are:					
	i <sub>t</sub>	for t =	i <sub>t</sub>	for t =	i <sub>t</sub>	for t =
*	*	*	*	*	*	*
July 2004 .....	.0450	1-20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of June, 2004.

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD09-04-028]

RIN 1625-AA00

**Safety Zone; Fireworks Displays in the Captain of the Port Detroit Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** Between June 23 and June 29, 2004, the Coast Guard will enforce permanent safety zones for annual fireworks displays in the Captain of the Port Detroit Zone. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

**DATES:** The safety zones in 33 CFR 165.907 will be enforced from June 23, 2004, until June 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, MI, at (313) 568-9580.

**SUPPLEMENTARY INFORMATION:** The safety zones in 33 CFR 165.907 were established to provide for the safety of vessels in the vicinity of fireworks displays in the Captain of the Port Detroit Zone. Entry into these zones is prohibited during the following enforcement periods unless authorized by the Captain of the Port or his designee:

(1) The safety zone for the Bay-Rama Fishfly Festival, New Baltimore, MI, will be enforced June 24, 2004, from 9 p.m. to 11 p.m.

(2) The safety zone for the St. Clair Shores Fireworks, St. Clair Shores, MI, will be enforced on June 25, 2004, from 10 p.m. to 10:35 p.m.

(3) The safety zone for the Sigma Gamma Assoc., Grosse Pointe Farms, MI, will be enforced on June 28, 2004, from 8:30 p.m. to 10 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis.

Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via

U.S. Coast Guard Group Detroit on channel 16, VHF-FM.

Dated: June 2, 2004.

**P.G. Gerrity,**  
Commander, U.S. Coast Guard, Captain of the Port Detroit.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD01-03-020]

RIN 1625-AA00

**Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent security zone in the Atlantic Ocean west of the Ambrose to Hudson Canyon Traffic Lane for high interest vessels during emergency situations. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during emergency situations onboard high interest vessels. This action is intended to restrict vessel traffic in a portion of the Atlantic Ocean.