

Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

These final rules impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

#### **List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 30, 2004.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

■ For the reasons set forth in the preamble, we are amending subpart C of part 404 of Title 20 of the Code of Federal Regulations as follows:

#### **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**

##### **Subpart C—[Amended]**

■ 1. The authority citation for subpart C of part 404 continues to read as follows:

**Authority:** Secs. 202(a), 205(a), 215, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(a), 405(a), 415, and 902(a)(5)).

■ 2. Sections 404.273, 404.274 and 404.275 are revised to read as follows:

##### **§ 404.273 When are automatic cost-of-living increases effective?**

We make automatic cost-of-living increases if the applicable index, either the CPI or the AWI, rises over a specified measuring period (*see* the rules on measuring periods in § 404.274). If the cost-of-living increase is to be based on an increase in the CPI, the increase is effective in December of the year in which the measuring period ends. If the increase is to be based on an increase in the AWI, the increase is effective in December of the year after the year in which the measuring period ends.

##### **§ 404.274 What are the measuring periods we use to calculate cost-of-living increases?**

(a) *General.* Depending on the OASDI fund ratio, we measure the rise in one index or in both indexes during the applicable measuring period (described in paragraphs (b) and (c) of this section) to determine whether there will be an automatic cost-of-living increase and if so, its amount.

(b) *Measuring period based on the CPI—(1) When the period begins.* The measuring period we use for finding the amount of the CPI increase begins with the later of—

(i) Any calendar quarter in which an *ad hoc* benefit increase is effective; or

(ii) The third calendar quarter of any year in which the last automatic increase became effective.

(2) *When the period ends.* The measuring period ends with the third calendar quarter of the following year. If this measuring period ends in a year after the year in which an *ad hoc* increase was enacted or took effect, there can be no cost-of-living increase at that time. We will extend the measuring period to the third calendar quarter of the next year.

(c) *Measuring period based on the AWI—(1) When the period begins.* The measuring period we use for finding the amount of the AWI increase begins with the later of—

(i) The calendar year before the year in which an *ad hoc* benefit increase is effective; or

(ii) The calendar year before the year in which the last automatic increase became effective.

(2) *When the period ends.* The measuring period ends with the following year. If this measuring period ends in a year in which an *ad hoc* increase was enacted or took effect, there can be no cost-of-living increase at that time. We will extend the measuring period to the next calendar year.

##### **§ 404.275 How is an automatic cost-of-living increase calculated?**

(a) *Increase based on the CPI.* We compute the average of the CPI for the quarters that begin and end the measuring period by adding the three monthly CPI figures (which are published to one decimal place), dividing the total by 3, and rounding the result to the nearest 0.1. If the average for the ending quarter is higher than the average for the beginning quarter, we divide the average for the ending quarter by the average for the beginning quarter to determine the percentage increase in the CPI over the measuring period.

(b) *Increase based on the AWI.* If the AWI for the year that ends the measuring period is higher than the AWI for the year which begins the measuring period and all the other conditions for an AWI-based increase are met, we divide the higher AWI by the lower AWI to determine the percentage increase in the AWI.

(c) *Rounding rules.* We round the increase from the applicable paragraph (a) or (b) of this section to the nearest 0.1 percent by rounding 0.05 percent

and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. For example, if the applicable index is the CPI and the increase in the CPI is 3.15 percent, we round the increase to 3.2 percent. We then apply this percentage increase to the amounts described in § 404.271 and round the resulting dollar amounts to the next lower multiple of \$0.10 (if not already a multiple of \$0.10).

(d) *Additional increase.* *See* § 404.278 for the additional increase that is possible.

#### **§ 404.278 [Amended]**

■ 3. In § 404.278, remove the parenthetical phrase at the end of paragraph (a)(2).

[FR Doc. 04–8573 Filed 4–14–04; 8:45 am]

BILLING CODE 4191–02–P

#### **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 May 2004. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** May 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 May 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 May 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 May 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 3.90 percent for the first 20 years following

the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for April 2004) of 0.10 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 3.00 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 April 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 May 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 127, 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>
* 127	* 5-1-04	* 6-1-04	* 3.00	* 4.00	* 4.00	* 4.00	* 7	* 8

■ 3. In appendix C to part 4022, Rate Set 127, 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>
* 127	* 5-1-04	* 6-1-04	* 3.00	* 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 $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
*	*	*	*	*	*	*
May 2004 ...	.0390	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of April 2004.

**Joseph H. Grant,**

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

[FR Doc. 04–8588 Filed 4–14–04; 8:45 am]

**BILLING CODE 7708–01–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 925

#### Clarification of Substituted Federal Enforcement for Parts of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program

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

**ACTION:** Final rule; clarification.

**SUMMARY:** On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems existed that were adversely affecting the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program's (MLRP) implementation and enforcement of the Missouri program. In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those portions of the Missouri program that the MLRP could not adequately implement and enforce. With the substitution of Federal enforcement authority, we outlined a process by which Missouri could regain full authority for its program.

This document clarifies the portions of the Missouri program that we directly enforce and sets forth our findings regarding the status of those portions of Missouri's program for which we required remedial actions.

This rule is being made effective immediately in order to expedite the actions required of the State to resume full authority for its approved program. **EFFECTIVE DATE:** April 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Clarification of OSM's August 22, 2003, Decision to Substitute Federal Enforcement for Parts of the Missouri Program
- III. OSM's Decision
- IV. Disposition of Comments
- V. Procedural Determinations

#### I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines

and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri's assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record