

must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93-638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96-502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

(1) legal and budgetary research; and  
(2) internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

#### § 1001.3 Priority ranking for negotiations.

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-governance option. This narrative should identify any activities that the tribe has pursued, carefully identifying and documenting the dates involved, including, but not limited to, the following:

(a) Prior planning activities related to self-governance, noting the source of funding for the planning activity and whether or not it was sanctioned by the Office of Self-Governance (OSG), including documentation as applicable.

(b) Prior efforts to secure planning and/or negotiation grants.

(c) Meetings with the OSG or other Departmental offices in which the tribe expressed an interest in participating in the Self-Governance Project.

(d) Correspondence between the tribe and the Department in which the tribe has expressed an interest in participating in the Self-Governance Project.

(e) All actions of the tribal governing body related to participating in the self-governance option.

#### § 1001.4 Application review and approval.

Upon receipt of an application, the OSG will review the package and determine whether or not it is complete. Upon determination that it is complete, the name of the tribe or consortium will be included in the official applicant pool. Incomplete submissions will be returned with the deficiencies identified. Revised applications may be resubmitted for consideration at any time.

#### § 1001.5 Application review and selection process for negotiations for funding agreements.

Upon acceptance into the applicant pool, the OSG will assign to each tribe or consortium a ranking relative to other applicants based upon the date the OSG receives the complete application package. This ranking will constitute a master list that will be maintained and updated on a continuous basis from year to year. When receipt dates are the same for two or more applications, several other factors will be considered in determining the placement of the tribe or consortium on the list. These factors are identified in priority order as follows:

(a) Designation by the Congress through report language that a tribe should be considered for participation. These designations will be considered based upon the actual language of the report.

(b) Documentation of OSG sanctioning of the tribe's self-governance planning and subsequent evidence of actual planning by the tribe.

(c) Submission of a completed planning or negotiation grant application in the previous year.

(d) A signed agreement pursuant to the Indian Health Service (IHS) self-governance project.

(e) Receipt of a planning grant awarded by the IHS.

#### § 1001.6 Submitting Applications.

(a) Applications for inclusion in the applicant pool will be accepted on an on-going basis.

(b) Applications may be mailed or hand-delivered.

(c) Applications for negotiations in 1996 that are mailed must be postmarked no later than May 16, 1995.

(d) Applications must be sent to: Director, Office of Self Governance,

Department of the Interior, 1849 C Street, NW MIB RM/MS-2548, Washington, DC 20240.

Dated: February 6, 1995.

**Ada E. Deer,**

*Assistant Secretary, Indian Affairs.*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 2619 and 2676

#### Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in March 1995, and to multiemployer plans with valuation dates in March 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

**EFFECTIVE DATE:** March 1, 1995.

**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 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This rule adopts the March 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during March 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1995.

For annuity benefits, the interest rates will be 7.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.00% for the period during which benefits are in pay status, 5.25% during the seven-year

period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. The above annuity and lump sum interest assumptions are unchanged from those in effect for February 1995.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

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

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during March 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1995, the PBGC finds that good cause exists for making the rates and factors 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 it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles 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 2619

Employee benefit plans, Pension insurance, and Pensions.

### 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

## PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

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

2. In appendix B, Rate Set 17 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

### Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

#### Lump Sum Valuations

In determining the value of interest factors of the form  $v^{0:n}$  (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of  $i_t$  set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $0 < y \leq n_1$ ), interest rate  $i_1$  shall apply from the valuation date for a period of  $y$  years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $n_1 < y \leq n_1 + n_2$ ), interest rate  $i_2$  shall apply from the valuation date for a period of  $y - n_1$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $y < n_1 + n_2$ ), interest rate  $i_3$  shall apply from the valuation date for a period of  $y - n_1 - n_2$  years, interest rate  $i_2$  shall apply for the following  $n_2$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATIONS

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	17	* 3-1-95	* 4-1-95	* 6.00	* 5.25	* 4.00	* 4.00	* 7	* 8

**Annuity Valuations**

In determining the value of interest factors of the form  $v^{0:n}$  (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor

used in valuing annuity benefits under this subpart, the plan administrator shall use the values of  $i_t$  prescribed in Table II hereof. The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by  $i_1, i_2, \dots$ , and referred to

generally as  $i_t$ ) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t=$	$i_t$	for $t=$	$i_t$	for $t=$
* March 1995 .....	* .0730	* 1-20	* .0575	* >20	* N/A	* N/A

**PART 2676—[AMENDED]**

3. The authority citation part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 17 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

**Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities**

**Lump Sum Valuations**

In determining the value of interest factors of the form  $v^{0:n}$  (as defined in § 2676.13(b)(1))

for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of  $i_t$  prescribed in Table I hereof. The interest rates set forth in Table I shall be used by PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $0 < y \leq n_1$ ), interest rate  $i_1$  shall apply from the valuation date for a period of  $y$  years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $n_1 < y \leq n_1 + n_2$ ), interest rate  $i_2$  shall apply from the valuation date for a period of  $y - n_1$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is  $y$  years ( $y$  is an integer and  $y > n_1 + n_2$ ), interest rate  $i_3$  shall apply from the valuation date for a period of  $y - n_1 - n_2$  years, interest rate  $i_2$  shall apply for the following  $n_2$  years, interest rate  $i_1$  shall apply for the following  $n_1$  years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATIONS

Rate set	For plans with a valuation date		Immediate annuities rate (percent)	Deferred annuities rate (percent)					
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$	
*	17	* 3-1-95	* 4-1-95	* 6.00	* 5.25	* 4.00	* 4.00	* 7	* 8

**Annuity Valuations**

In determining the value of interest factors of the form  $v^{0:n}$  (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor

used in valuing annuity benefits under this subpart, the plan administrator shall use the values of  $i_t$  prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by  $i_1, i_2, \dots$ , and referred to

generally as  $i_t$ ) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t=$	$i_t$	for $t=$	$i_t$	for $t=$
March 1995 .....	.0730	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of February 1995.

**Martin Slate,**  
Executive Director, Pension Benefit Guaranty Corporation.

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 917**

**Kentucky Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky has proposed revisions to the Kentucky Administrative Rules (KAR) at 405 KAR 7:080 concerning the types of assistance provided by Kentucky's Small Operator Assistance Program (SOAP) and the eligibility criteria for that assistance. The amendment is intended to revise the Kentucky program to be consistent with changes in section 507 of SMCRA enacted by Congress as part of the Energy Policy Act of 1992, Public Law 102–486.

**EFFECTIVE DATE:** February 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Rd, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments

- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Kentucky Program**

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

**II. Submission of the Proposed Amendment**

By letter dated April 26, 1994 (Administrative Record No. KY–1278), Kentucky submitted a proposed amendment to its program on its own initiative. This amendment proposed to revise ten sections of Kentucky's regulations at 405 KAR 7:080 concerning Kentucky's Small Operator Assistance Program (SOAP). The proposed amendment included revisions to the sections pertaining to program services, eligibility for services, information requirements, and applicant liability. It also contained editorial revisions and clarifications of other sections.

OSM announced receipt of the proposed amendment in the May 20, 1994, **Federal Register** (59 FR 26471), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1994.

In the September 1, 1994, **Federal Register** (59 FR 45201), the Director of OSM announced his decision to approve the amendment, with certain exceptions. As part of his decision, the Director required Kentucky to submit a second proposed amendment to further

revise 405 KAR 7:080 sections 5(2) and 11(1) to:

(1) Delete the phrase "the twelve (12) months immediately following the date the permit is issued";

(2) Provide that an applicant establish that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons; and

(3) Either delete the word "laboratory" in the phrase "The applicant shall reimburse the cabinet for the costs of the laboratory services performed \* \* \*" or otherwise specify that the costs of all services rendered pursuant to 405 KAR 7:080 shall be reimbursed by SOAP recipients.

By letter dated October 3, 1994 (Administrative Record No. KY–1320), Kentucky submitted further rule revisions in an amendment intended to address the requirements in the Director's September 1, 1994, decision and to make other editorial corrections to Kentucky's regulations. OSM announced receipt of the proposed amendment in the November 14, 1994, **Federal Register** (59 FR 56449), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 14, 1994.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

**A. Revisions to Kentucky's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations**