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(h) A record developed and maintained to comply with a State law may be used to meet the requirements of this section if the record includes the information specified in this section.

Dated: November 22, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

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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 Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2012. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: *Effective Date:* January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, 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 Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). 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. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when 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) of the asset allocation regulation, 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-11 with Table I-12 in order to provide an updated correlation, appropriate for calendar year 2012, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-12 will be used to value benefits in plans with valuation dates during calendar year 2012.

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 2012, 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 2012.

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—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 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-11 and adding in its place Table I-12 to read as follows:

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

TABLE I-12— SELECTION OF RETIREMENT RATE CATEGORY
 [For plans with valuation dates after December 31, 2011, and before January 1, 2013]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low ¹ if monthly benefit at URA is less than—	Medium ² if monthly benefit at URA is—		High ³ if monthly benefit at URA is greater than—
		From—	To—	
2013	575	575	2,431	2,431
2014	586	586	2,477	2,477
2015	598	598	2,527	2,527
2016	610	610	2,577	2,577
2017	623	623	2,632	2,632
2018	636	636	2,687	2,687
2019	649	649	2,743	2,743
2020	663	663	2,801	2,801
2021	677	677	2,860	2,860
2022 or later	691	691	2,920	2,920

¹ Table II-A.² Table II-B.³ Table II-C.

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Issued in Washington, DC, this 18th day of November 2011.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO-P-2011-0014]

RIN 0651-AC56

Revision of Patent Term Adjustment Provisions Relating to Information Disclosure Statements

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the patent term adjustment provisions of the rules of practice in patent cases. The patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) provide for a reduction of any patent term adjustment if the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Office is revising the rules of practice pertaining to the reduction of patent term adjustment for applicant delays to exclude information disclosure statements resulting from the citation of information in a counterpart application that are promptly filed with

the Office. The rule change allows the diligent applicant to avoid patent term adjustment reduction for an IDS submission that results from a communication from the Office. Presently, the rule only provides relief if the IDS was cited as a result of a communication from a foreign patent office. Under this final rule, there will be no reduction of patent term adjustment in the following situations: when applicant promptly submits a reference in an information disclosure statement after the mailing of a notice of allowance if the reference was cited by the Office in another application, or when applicant promptly submits a copy of an Office communication (e.g., an Office action) in an information disclosure statement after the mailing of a notice of allowance if the Office communication was issued by the Office in another application or by a foreign patent office in a counterpart foreign application. The above changes are intended to ensure compliance with AIPA in light of the evolving case law.

DATES: *Effective Date:* December 1, 2011.

FOR FURTHER INFORMATION CONTACT: Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at (571) 272-7757, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Kery A. Fries.

SUPPLEMENTARY INFORMATION: The AIPA amended 35 U.S.C. 154(b) to provide patent term adjustment for certain delays during the patent examination process. *See* Public Law 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999)). Specifically, under the

patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, an applicant is entitled to patent term adjustment for the following reasons: (1) If the Office fails to take certain actions during the examination and issue process within specified time frames (35 U.S.C. 154(b)(1)(A)); (2) if the Office fails to issue a patent within three years of the actual filing date of the application in the United States (35 U.S.C. 154(b)(1)(B)); and (3) for delays due to interference, secrecy order, or successful appellate review (35 U.S.C. 154(b)(1)(C)). The AIPA, however, sets forth a number of conditions and limitations on any patent term adjustment accrued under 35 U.S.C. 154(b)(1). Specifically, 35 U.S.C. 154(b)(2)(C) provides, in part, that “[t]he period of adjustment of the term of a patent under [35 U.S.C. 154(b)(1)] shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application” and that “[t]he Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.” 35 U.S.C. 154(b)(2)(C)(i) and (iii). The Office implemented the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, including setting forth the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application, in a final rule published in September of 2000. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent*