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## 29 C.F.R. § 4022.27

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### Phase-in of guarantee of unpredictable contingent event benefits.

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(a) *Scope.* This section applies to a benefit increase, as defined in § 4022.2, that is an unpredictable contingent event benefit (UCEB) and that is payable with respect to an unpredictable contingent event (UCE) that occurs after July 26, 2005.

(1) Examples of benefit increases within the scope of this section include unreduced early retirement benefits or other early retirement subsidies, or other benefits to the extent that such benefits would not be payable but for the occurrence of one or more UCEs.

(2) Examples of UCEs within the scope of this section include full and partial closings of plants or other facilities, and permanent workforce reductions, such as permanent layoffs. Permanent layoffs include layoffs during which an idled employee continues to earn credited service (creep-type layoff) for a period of time at the end of which the layoff is deemed to be permanent. Permanent layoffs also include layoffs that become permanent upon the occurrence of an additional event such as a declaration by the employer that the participant's return to work is unlikely or a failure by the employer to offer the employee suitable work in a specified area.

(3) The examples in this section are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definitions, as further delineated in Treasury Regulations.

(b) *Facts and circumstances.* If PBGC determines that a benefit is a shutdown benefit or other type of UCEB, the benefit will be treated as a UCEB for purposes of this subpart. PBGC will make such determinations based on the facts and circumstances, consistent with these regulations; how a benefit is characterized by the employer or other parties may be relevant but is not determinative.

(c) *Date phase-in begins.* (1) The date the phase-in of PBGC's guarantee of a UCEB begins is determined in accordance with subpart B of this part. For purposes of this subpart, a UCEB is deemed to be in effect as of the latest of—

(i) The adoption date of the plan provision that provides for the UCEB,

(ii) The effective date of the UCEB, or

(iii) The date the UCE occurs.

(2) The date the phase-in of PBGC's guarantee of a UCEB begins is not affected by any delay that may occur in placing participants in pay status due to removal of a restriction under section 436(b) of the Code. See the example in paragraph (e)(8) of this section.

(d) *Date UCE occurs.* For purposes of this section, PBGC will determine the date the UCE occurs based on plan provisions and other facts and circumstances, including the nature and level of activity at a facility that is

closing and the permanence of the event. PBGC will also consider, to the extent relevant, statements or determinations by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court, but will not treat such statements or determinations as controlling.

(1) The date a UCE occurs is determined on a participant-by-participant basis, or on a different basis, such as a facility-wide or company-wide basis, depending upon plan provisions and the facts and circumstances. For example, a benefit triggered by a permanent layoff of a participant would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. In contrast, a benefit payable only upon a complete plant shutdown would apply facility-wide, and generally the shutdown date would be the date of the UCE for all participants who work at that plant. Similarly, a benefit payable only upon the complete shutdown of the employer's entire operations would apply plan-wide, and thus the shutdown date of company operations generally would be the date of the UCE for all participants.

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