

security conditions. If the revoked document is a stamp in a passport the consular or immigration officer shall write or stamp "canceled" on the face of the document.

(c) *Voidance.* (1) The voiding pursuant to INA 222(g) of the visa portion of a B-1/B-2 Visa/BCC issued at any time by a consular officer in Canada under provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, also voids the BCC portion of that document.

(2) A BCC issued at any time by a consular officer in Canada under any provisions of this section contained in the 22 CFR, parts 1 to 299, edition revised as of April 1, 1998, is void if it is found by a consular or immigration officer that the alien has violated the conditions of the alien's admission into the United States, including the period of stay authorized by the Attorney General.

(3) A consular or immigration officer shall immediately take possession of a card determined to be void under paragraphs (c) (1) or (2) of this section and physically cancel it under standard security conditions. If the document voided under paragraphs (c) (1) or (2) is in the form of a stamp in a passport the officer shall write or stamp "canceled" across the face of the document.

5. Section 41.122 is amended by adding a new paragraph (a) (4) and new paragraph (h) (9) to read as follows:

**§ 41.122 Revocation of visas.**

(a) *Grounds for revocation by consular officers.* \* \* \*

\* \* \* \* \*

(4) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card and the officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the alien's status as a permanent resident of Canada.

\* \* \* \* \*

(h) *Revocation of visa by immigration officer.* \* \* \*

(9) The visa has been issued in a combined Mexican or Canadian B-1/B-2 visa and border crossing identification card and the officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the alien's status as a permanent resident of Canada.

Dated: April 1, 1998.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 98-9084 Filed 4-6-98; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8768]

RIN 1545-AT27

#### Valuation of Plan Distributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that provide guidance to employers in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution made in any form other than certain nondecreasing annuity forms. These regulations are issued to reflect changes to the applicable law made by the Retirement Protection Act of 1994 (RPA '94), which is part of the Uruguay Round Agreements Act of 1994. RPA '94 amended the law to change the interest rate, and to specify the mortality table, for the purposes described above. These regulations affect employers that maintain qualified defined benefit pension plans, and participants and beneficiaries in those plans.

**DATES:** *Effective date:* These regulations are effective April 3, 1998.

*Applicability date:* These regulations apply to plan years beginning after December 31, 1994, except as provided in § 1.417(e)-1(d) (8) and (9).

**FOR FURTHER INFORMATION CONTACT:** Linda S. F. Marshall, (202) 622-6030 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 417(e). Section 417(e) was amended by the Retirement Protection Act of 1994 (RPA '94). On April 5, 1995, temporary regulations (TD 8591) under section 417(e) were published in the **Federal Register** (60 FR 17216). A notice of proposed rulemaking (EE-12-95), cross-referencing the temporary regulations,

was published in the **Federal Register** (60 FR 17286) on the same day. The temporary regulations provide guidance related to the determination of the present value of an employee's benefit under a qualified defined benefit pension plan in accordance with the rules of section 417(e)(3). After consideration of the public comments received regarding the temporary and proposed regulations, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision.

Section 417(e)(3) sets forth rules to be used in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution. The rules of section 417(e)(3) are also relevant to the application of section 411(a)(11) and section 415(b). Section 411(a)(11) provides that a participant's benefit with a present value that exceeds a statutory threshold can be immediately distributed to a participant only with the participant's consent. The level of this statutory threshold was changed from \$3,500 to \$5,000 by the Taxpayer Relief Act of 1997, effective for plan years beginning after August 5, 1997. Under section 411(a)(11)(B), as amended by RPA '94, the present value of a participant's benefit is calculated using the rules of section 417(e)(3).

Section 415(b) limits the maximum benefit that can be provided under a qualified defined benefit plan. Under section 415(b)(2)(E)(ii), as amended by RPA '94, the minimum interest rate permitted to be used for certain purposes to determine compliance with the limit under section 415(b) is the applicable interest rate as defined in section 417(e)(3). Because the rules of section 417(e)(3) affect the application of sections 411(a)(11)(B) and 415(b)(2)(E)(ii), the guidance provided by these regulations is relevant to the application of those provisions.

#### Explanation of provisions

Section 417(e) restricts the ability of certain qualified retirement plans to distribute a participant's benefit under the plan without the consent of the participant and, in many cases, the participant's spouse. The application of these restrictions is determined based on the present value of the participant's benefit. Prior to amendments made by RPA '94, section 417(e)(3) restricted the interest rate to be used under a plan to calculate the present value of a participant's benefit, but did not impose any restrictions on the mortality table to be used for that purpose. Section 767 of

RPA '94 modified section 417(e)(3) to provide that the present value of a participant's benefit is not less than the present value calculated by using the applicable mortality table and the applicable interest rate.

In general, comments received on the proposed and temporary regulations were favorable. Thus, the final regulations retain the general structure and substance of the proposed and temporary regulations.

#### **Applicable mortality table**

The applicable mortality table under section 417(e)(3) is defined as the table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)). Currently, the prevailing commissioners' standard table is the 1983 Group Annuity Mortality Table. See Rev. Rul. 92-19 (1992-1 C.B. 227). These regulations retain the provision in the temporary regulation that the applicable mortality table as described above is to be prescribed by the Commissioner in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin. The mortality table currently prescribed by the Commissioner is set forth in Rev. Rul. 95-6 (1995-1 C.B. 80), and is based on a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table.

#### **Applicable interest rate**

Under section 417(e)(3), the applicable interest rate is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These regulations retain the rule in the temporary regulations that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month. The Commissioner publishes this interest rate for each month by notice, after the end of the month. Currently, this interest rate is the interest rate published in Federal Reserve releases G.13 and H.15 as the average yield on 30-year Treasury Constant Maturities for the month.

The interest rate on 30-year Treasury Constant Maturities published monthly in Federal Reserve releases G.13 and H.15 can also be obtained by telephone from the Public Information Department

of the Federal Reserve Bank of New York at (212) 720-6130 (not a toll-free number), or from the Federal Reserve Board of Governors' Internet site at <http://www.bog.frb.fed.us/releases>. Information regarding subscriptions to Federal Reserve releases G.13 and H.15 can be obtained from the Publications Department of the Federal Reserve Board of Governors at (202) 452-3244 (not a toll-free number).

#### **Time for determining applicable interest rate**

Section 417(e)(3)(A)(ii)(II) provides that the applicable interest rate for distributions made during a month is the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. As an alternative to this monthly change in the applicable interest rate, the temporary regulations permitted selection of a plan quarter or a plan year as a stability period during which the applicable interest rate remains constant, thereby permitting plans to offer greater benefit stability than is provided by the statutory rule. One commentator suggested adding a calendar year and a calendar quarter as additional alternative stability periods for the applicable interest rate, and another suggested adding a plan half-year. The IRS and Treasury have weighed the usefulness of the additional proposed stability periods for taxpayers against the additional complexity that would be added to the regulation, and have added a calendar year and a calendar quarter as additional alternative stability periods.

These regulations retain the rule in the temporary regulations that the applicable interest rate for the stability period may be determined as the 30-year Treasury rate for any one of the five calendar months preceding the first day of the stability period. Permitting this "lookback" of up to five months provides added flexibility and gives plan administrators and participants more time to comply with applicable notice and election requirements using the actual interest rate (instead of an estimate).

Several commentators suggested that regulations permit an average of lookback month interest rates to be used, in lieu of the interest rate for a single lookback month, to minimize interest rate fluctuations. These regulations adopt this suggestion, and permit an average interest rate based on consecutive permitted lookback months to be used for this purpose.

Several commentators suggested that a plan be allowed to provide for

different applicable interest rates for each portion of the plan that independently meets the requirements of sections 410(b) and 401(a)(26). The IRS and Treasury have determined, however, that there is insufficient basis for adopting a definition of a "plan" that is different from the general definition set forth in § 1.414(l)-1(b)(1).

#### **Exceptions from the requirements of section 417(e)(3)**

The temporary regulations provided an exception from the requirements of section 417(e)(3) and § 1.417(e)-1T(d) for the amount of a distribution under a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a QPSA, the life of the surviving spouse. For purposes of this exception, a nondecreasing annuity included a QJSA, a QPSA, and an annuity that decreased merely because of the cessation or reduction of Social Security supplements or qualified disability payments (as defined in section 411(a)(9)). This exception was identical to the exception provided under former final regulations. Several commentators pointed out that this exception did not cover several other types of annuity forms of distribution that were nondecreasing during the life of the participant, and suggested that the regulations be changed to provide additional exceptions for these additional annuity forms of distribution.

The IRS and Treasury have determined that it is appropriate to provide additional exceptions for these benefit forms. Accordingly, under the final regulations, section 417(e)(3) and § 1.417(e)-1(d) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability benefits. Also, under Q&A-2 of Rev. Rul. 98-1 (1998-2 I.R.B. 1), the interest rate prescribed by section 415(b)(2)(E)(ii) does not apply to these forms of benefit.

#### **Effective dates**

These regulations generally apply to plan years beginning after December 31, 1994.

Under section 417(e)(3)(B) and these regulations, the general effective date for the RPA '94 rules is delayed for certain plans until the first plan year that begins after December 31, 1999, unless an employer takes earlier action. The delayed effective date applies to a plan adopted and in effect before December 8, 1994, if the provisions of the plan in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on December 7, 1994. For such a plan, the determination of whether a distribution made before the first day of the first plan year that begins after December 31, 1999, satisfies section 417(e) is made under the provisions of the plan in effect on December 7, 1994, if the annuity starting date for the distribution occurs before the date a plan amendment applying both the applicable mortality table and the applicable interest rate rules added by RPA '94 is adopted or, if later, is made effective. Thus, under section 417(e)(3)(B) and these regulations, a plan that was adopted and in effect before December 8, 1994, and the provisions of which, as in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on that date, cannot be amended to provide a different method of calculating the present value of a distribution under section 417(e)(3) effective before the date a plan amendment applying both the applicable mortality table and the applicable interest rate rules added by RPA '94 is adopted or, if later, is made effective.

One commentator inquired whether, where a plan is spun off from another plan during the optional delayed effective date period, both plans are required to be amended to apply the applicable mortality table and the applicable interest rate rules added by RPA '94 effective on the same date. Because these rules apply on a plan by plan basis, the plans are not required to be amended effective on the same date. One other commentator suggested that the regulations be changed to permit a plan to provide for different optional delayed effective dates for each separate benefit structure that independently meets the requirements of section 401(a)(4). Section 417(e)(3)(B) requires a single effective date for a plan amendment applying the applicable mortality table and the applicable interest rate rules added by RPA '94. Therefore, this suggestion is inconsistent with the statute. Of course, a plan amendment that applies the applicable mortality table and the applicable interest rate rules added by RPA '94 may provide for temporary or

permanent use of interest and mortality assumptions for specified participant groups that result in larger distributions than the minimum required under these RPA '94 rules, provided that other qualification requirements (such as section 401(a)(4)) are satisfied.

These regulations restate the rules applicable to plan years beginning before January 1, 1995, without substantive change. Those pre-1995 rules also apply to later plan years, to the extent that the application of the RPA '94 rules is delayed as described above.

In addition, section 767(d)(1) of RPA '94 permits an employer to elect to accelerate the effective date of the RPA '94 rules, and hence these regulations, in order to apply the RPA '94 rules to distributions with annuity starting dates occurring after December 7, 1994, in plan years beginning before January 1, 1995. An employer that makes a plan amendment applying the applicable mortality table and the applicable interest rate rules of these regulations is treated as making this election as of the date the plan amendment is adopted or, if later, is made effective.

#### **Relationship with section 411(d)(6)**

Section 411(d)(6) provides that a plan does not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. In general, a plan amendment that changes the interest rate or the mortality assumptions used for purposes of determining the amount of any accrued benefit in any preexisting optional form is subject to section 411(d)(6). Consistent with both the temporary regulations and the prior final regulations, these regulations provide limited section 411(d)(6) relief for certain plan amendments that change the time for determining the applicable interest rate. A plan amendment that changes the time for determining the applicable interest rate will not be treated as violating section 411(d)(6) if each distribution made until one year after the later of the effective date or the adoption date of the amendment is calculated using the time for determining the applicable interest rate as provided before or after the amendment, whichever produces the larger benefit. For this purpose, all other plan provisions must be applied as in effect after the amendment.

Section 767(d)(2) of RPA '94 provides that a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because the benefit is determined in accordance with the applicable interest rate rules and the applicable mortality

table rules of section 417(e)(3)(A), as amended by RPA '94. These regulations provide that an amendment replacing an interest rate used for purposes of section 417(e)(3) qualifies for this section 411(d)(6) relief if the interest rate replaced is the Pension Benefit Guaranty Corporation (PBGC) interest rate or a rate based on the PBGC interest rate. Pursuant to suggestions made by several commentators, these regulations clarify that the interest rates that may be replaced pursuant to this section 411(d)(6) relief include an interest rate based on the average of the PBGC interest rates over a specified period. In addition, pursuant to suggestions made by two commentators, the final regulations clarify the relationship between the various types of section 411(d)(6) relief under the regulations, and provide some additional flexibility to employers in determining how to transition between the PBGC interest rate and the applicable interest rate and applicable mortality table, where the transition is combined with a change in the time for determining the interest rate.

One commentator asked whether the section 411(d)(6) relief for plan amendments adopting the applicable mortality table and the applicable interest rate rules applies with respect to terminated vested participants. Because the section 411(d)(6) relief provided under section 767(d)(2) of RPA '94 applies in the same manner with respect to active and terminated participants, the regulations likewise do not distinguish terminated vested participants from other participants in this regard.

Several commentators requested that the regulations be amended to provide unconditional section 411(d)(6) relief for plan amendments adopting the applicable interest rate and applicable mortality table rules of RPA '94 regardless of changes in the time for determining the applicable interest rate. The IRS and Treasury have determined that providing some additional flexibility to employers in determining how to transition between the PBGC interest rate and the applicable interest rate and applicable mortality table, as discussed above, where the transition is combined with a change in the time for determining the interest rate, strikes an appropriate balance between the practical concerns of employers and the rights of participants.

These regulations further provide that, where a plan provided for the use of an interest rate not based on the PBGC interest rate prescribed by section 417(e)(3) as in effect before amendments made by RPA '94, a plan amendment

that eliminates the use of that interest rate and the associated mortality table may result in a reduction of a participant's accrued benefit, which would violate the requirements of section 411(d)(6). Two commentators suggested that final regulations provide section 411(d)(6) relief for plan amendments that eliminate the use of an interest rate not based on the PBGC interest rate, for plan amendments that adopt the applicable interest rate and applicable mortality table rules of RPA '94. Another commentator requested that final regulations provide for similar section 411(d)(6) relief, but only for mandatory distributions that are permitted pursuant to the rules of section 411(a)(11). The IRS and Treasury have determined that section 767(d)(2) of RPA '94 does not support a grant of section 411(d)(6) relief with respect to plan amendments eliminating interest rates that are not based on the PBGC interest rate.

These regulations provide examples of the application of section 411(d)(6) and the special rule of section 767(d)(2) of RPA '94, including an example illustrating the use of a phase-in that provides for a smoother transition from the plan's former terms to the new rules. In addition, these regulations provide section 411(d)(6) relief for certain plan amendments that eliminate use of the applicable interest rate and the applicable mortality table with respect to distribution forms that are newly excepted from the application of section 417(e)(3) by these regulations.

The PBGC has advised the IRS and Treasury that it has not made any decision at this time on whether it will continue to calculate and publish the relevant interest rates after the year 2000. Therefore, in amending plans to comply with these regulations, employers should not rely on the continued determination and publication of these rates by the PBGC beyond the year 2000.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these

regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.417(e)–1 also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II). \* \* \*

**Par. 2.** In § 1.417(e)–1, paragraph (d) is revised to read as follows:

### § 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

\* \* \* \* \*

(d) *Present value requirement*—(1) *General rule.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence.

The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) *Applicable mortality table.* The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which

present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). The Commissioner may prescribe rules that apply in the case of a change to the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(3) *Applicable interest rate*—(i) *General rule.* The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(ii) *Example.* This example illustrates the rules of this paragraph (d)(3):

*Example.* Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95–6 (1995–1 C.B. 80), and that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of \$1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single sum received by P may not be less than \$111,351.

(4) *Time for determining interest rate*—(i) *General rule.* Except as provided in paragraph (d)(4)(iv) or (v) of this section, the applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Stability period.* A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year.

(iii) *Lookback month.* A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv) *Permitted average interest rate.* A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average interest rate with respect to the plan's stability period for the rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average interest rate with respect to a stability period is an interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(iv) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(v) *Additional determination dates.* The Commissioner may prescribe, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), other times that a plan may provide for determining the applicable interest rate.

(vi) *Example.* This example illustrates the rules of this paragraph (d)(4):

*Example.* Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) *Use of alternative interest rate and mortality table.* If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit

produced by using the applicable interest rate and the applicable mortality table. For example, if a plan provides for use of an interest rate of 7% and the UP-1984 Mortality Table (see § 1.401(a)(4)-12, *Standard mortality table*) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using 7% and the UP-1984 Mortality Table and the single-sum benefit calculated using the applicable interest rate and the applicable mortality table.

(6) *Exceptions.* This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that—

(i) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(ii) Decreases during the life of the participant merely because of—

(A) The death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant); or

(B) The cessation or reduction of Social Security supplements or qualified disability benefits (as defined in section 411(a)(9)).

(7) *Defined contribution plans.*

Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), even though it is subject to section 401(a)(11).

(8) *Effective date—(i) In general.* This paragraph (d) is effective for distributions with annuity starting dates in plan years beginning after December 31, 1994.

(ii) *Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94)(108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994.* For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the applicable mortality table and applicable interest rate under paragraphs (d)(2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) and § 1.417(e)-1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective

date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before January 1, 1995) apply in lieu of the rules of paragraphs (d)(2) through (4) of this section. The interest rate under the rules of paragraph (d)(9) of this section is determined under the provisions of the plan as in effect on December 7, 1994, reflecting the interest rate or rates published by the Pension Benefit Guaranty Corporation (PBGC) and the provisions of the plan for determining the date on which the interest rate is fixed. The above described interest rate or rates published by the PBGC are those determined by the PBGC (for the date determined under those plan provisions) pursuant to the methodology under the regulations of the PBGC for determining the present value of a lump sum distribution on plan termination under 29 CFR part 2619 that were in effect on September 1, 1993 (as contained in 29 CFR part 2619 revised July 1, 1994).

(iii) *Optional accelerated effective date of RPA '94 rules.* This paragraph (d) is also effective for a distribution with an annuity starting date after December 7, 1994, during a plan year beginning before January 1, 1995, if the employer elects, on or before the annuity starting date, to make the rules of this paragraph (d) effective with respect to the plan as of the optional accelerated effective date described in paragraph (d)(8)(iv) of this section. An employer is treated as making this election by making the plan amendments described in paragraph (d)(8)(iv) of this section.

(iv) *Determination of delayed or accelerated effective date by plan amendment adopting RPA '94 rules.* The optional delayed effective date of paragraph (d)(8)(ii) of this section, or the optional accelerated effective date of paragraph (d)(8)(iii) of this section, whichever is applicable, is the date plan amendments applying both the applicable mortality table of paragraph (d)(2) of this section and the applicable interest rate of paragraph (d)(3) of this section are adopted or, if later, are made effective.

(9) *Plan years beginning before January 1, 1995—(i) Interest rate.* (A) For distributions made in plan years beginning after December 31, 1986, and before January 1, 1995, the following interest rate described in paragraph (d)(9)(i)(A)(1) or (2) of this section, whichever applies, is substituted for the

applicable interest rate for purposes of this section—

(I) The rate or rates that would be used by the PBGC for a trustee single-employer plan to value the participant's (or beneficiary's) vested benefit (PBGC interest rate) if the present value of such benefit does not exceed \$25,000; or

(2) 120 percent of the PBGC interest rate, as determined in accordance with paragraph (d)(9)(i)(A)(1) of this section, if such present value exceeds \$25,000. In no event shall the present value determined by use of 120 percent of the PBGC interest rate result in a present value less than \$25,000.

(B) The PBGC interest rate may be a series of interest rates for any given date. For example, the PBGC interest rate for immediate annuities for November 1994 is 6%, and the PBGC interest rates for the deferral period for that month are as follows: 5.25% for the first 7 years of the deferral period, 4% for the following 8 years of the deferral period, and 4% for the remainder of the deferral period. For November 1994, 120 percent of the PBGC interest rate is 7.2% (1.2 times 6%) for an immediate annuity, 6.3% (1.2 times 5.25%) for the first 7 years of the deferral period, 4.8% (1.2 times 4%) for the following 8 years of the deferral period, and 4.8% (1.2 times 4%) for the remainder of the deferral period. The PBGC interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trustee single employer plan. Except as otherwise provided by the Commissioner, the PBGC interest rates are determined by PBGC regulations. See subpart B of 29 CFR part 4044 for the applicable PBGC rates.

(ii) *Time for determining interest rate.*

(A) Except as provided in paragraph (d)(9)(ii)(B) of this section, the PBGC interest rate or rates are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(B) The plan may provide for the use of any other time for determining the PBGC interest rate or rates provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(C) The Commissioner may, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), prescribe other times for determining the PBGC interest rate or rates.

(iii) *No applicable mortality table.* In the case of a distribution to which this paragraph (d)(9) applies, the rules of this paragraph (d) are applied without regard to the applicable mortality table described in paragraph (d)(2) of this section.

(10) *Relationship with section 411(d)(6)*—(i) *In general.* A plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section is subject to section 411(d)(6). But see § 1.411(d)-4, Q&A-2(b)(2)(v) (regarding plan amendments relating to involuntary distributions). In addition, a plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section merely to eliminate use of the interest rate described in paragraph (d)(3) or paragraph (d)(9) of this section, or the applicable mortality table, with respect to a distribution form described in paragraph (d)(6) of this section, for distributions with annuity starting dates occurring after a specified date that is after the amendment is adopted, does not violate the requirements of section 411(d)(6) if the amendment is adopted on or before the last day of the last plan year ending before January 1, 2000.

(ii) *Section 411(d)(6) relief for change in time for determining interest rate.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (including an indirect change as a result of a change in plan year), the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(10)(ii) are satisfied. If the plan amendment is effective on or after the adoption date, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be determined using the interest rate provided under the plan determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

(iii) *Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for statutory interest rate determination date.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied—

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(iv) *Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for prior determination date or up to two months earlier.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied—

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate, but only if the applicable interest rate is the annual interest rate on 30-year Treasury securities for the calendar month that contains the date as of which the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) was determined immediately before the amendment, or for one of the two

calendar months immediately preceding such month.

(v) *Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for other interest rate determination date.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied—

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d);

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate; and

(C) The plan amendment satisfies either the condition of paragraph (d)(10)(ii) of this section (determined using the interest rate provided under the terms of the plan after the effective date of the amendment) or the special early transition interest rate rule of paragraph (d)(10)(vi)(C) of this section.

(vi) *Special rules—(A) Provision of temporary additional benefits.* A plan amendment described in paragraph (d)(10)(iii), (iv), or (v) of this section is not considered to reduce a participant's accrued benefit in violation of section 411(d)(6) even if the plan amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules.

(B) *Replacement of non-PBGC interest rate.* The section 411(d)(6) relief provided in paragraphs (d)(10)(iii) through (v) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6). For purposes of this paragraph (d), an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC

interest rate, the PBGC interest rate minus a specified number of basis points, or an average of such interest rates over a specified period.

(C) *Special early transition interest rate rule for paragraph (d)(10)(v).* A plan amendment satisfies the special rule of this paragraph (d)(10)(vi)(C) if any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective is determined using whichever of the following two interest rates results in the larger distribution—

(1) The interest rate as provided under the terms of the plan after the effective date of the amendment, but determined at a date that is either one month or two months (as specified in the plan) before the date for determining the interest rate used under the terms of the plan before the amendment; or

(2) The interest rate as provided under the terms of the plan after the effective date of the amendment, determined at the date for determining the interest rate after the amendment.

(vii) *Examples.* The provisions of this paragraph (d)(10) are illustrated by the following examples:

*Example 1.* On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iii) of this section, this amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6).

*Example 2.* On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%. On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iv) of this section, this amendment of Plan B is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6) merely because of the replacement of the PBGC interest rate. However, under paragraph (d)(10)(vi)(B) of this section, the section 411(d)(6) relief provided in paragraphs (d)(10)(iii) through (v) of this section does not apply to a plan amendment that replaces an interest rate

other than the PBGC interest rate (or a rate based on the PBGC interest rate). Therefore, pursuant to paragraph (d)(10)(vi)(B) of this section, to satisfy the requirements of section 411(d)(6), the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP-1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

*Example 3.* On December 31, 1994, Plan C, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan C was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for January of the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraph (d)(10)(v) of this section, the amendment of Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

*Example 4.* (a) Employer X maintains Plan D, a calendar year plan. As of December 7, 1994, Plan D provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than \$25,000, and 120% of that interest rate (but not an interest rate producing a present value less than \$25,000) for distributions over \$25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3). On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan D to provide that single-sum distributions are determined as the sum of—

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the years 1996-99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this *Example 4*. The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The



amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Pursuant to paragraphs (d)(10)(iii) and (vi)(A) of this section, the amendment of Plan D is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

**Example 5.** On December 31, 1994, Plan E, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan E was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for November of the plan year preceding the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraphs (d)(10)(v) and (vi)(C) of this section, the amendment of Plan E is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

**Par. 3.** In § 1.417(e)-1T, paragraph (d) is revised to read as follows:

**§ 1.417(e)-1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417. (Temporary)**

\* \* \* \* \*

(d) For rules regarding the present value of a participant's accrued benefit and related matters, see § 1.417(e)-1(d).

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: March 30, 1998

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 9**

[T.D. ATF-397; RE: Notice No. 854]

RIN 1512-AA07

**Establishment of the Yorkville Highlands Viticultural Area and Realignment of the Southern Boundary of the Mendocino Viticultural Area (95F-020P)**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule establishes a viticultural area located in Mendocino County, California, to be known as "Yorkville Highlands," and extends the southern boundary of the Mendocino Viticultural Area to coincide with the boundary of Yorkville Highlands. These actions are the result of a petition filed by Mr. William J.A. Weir for the Yorkville Highlands Appellation Committee and a related petition filed by Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance.

The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

**EFFECTIVE DATE:** June 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

**Petitions**

ATF received a petition from Mr. William J.A. Weir of Weir Vineyards for the Yorkville Highlands Appellation Committee ("Yorkville Highlands petition"). The petition was signed by Mr. Larry W. Martz of Martz Vineyards, Inc., Mr. Frank Souzao of Souzao Cellars, Mr. Michael J. Page, of Mountain House Vineyard, Mr. Robert A. Vidmar of Vidmar Vineyard, and Mr. Edward D. Wallo, of Yorkville Vineyards. The petitioners represent both wineries and growers within the area. The area includes historic vineyards dating from 1914 as well as newly established vineyards. ATF also received a related petition from Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance ("Mendocino petition"), requesting that the southern boundary of the previously approved Mendocino Viticultural Area be extended to coincide with the requested southern boundary in the Yorkville Highlands petition. The Mendocino Viticultural Area was established pursuant to T.D. ATF-178 on June 15, 1984 (49 FR 24711). The Mendocino petition incorporated the Yorkville Highlands petition by reference and stated that the proposed Yorkville Highlands southern boundary was appropriate for the Mendocino viticultural area as well.

These two proposals result in the Yorkville Highlands area being entirely within the Mendocino area. Both areas are entirely within Mendocino County, California. The Yorkville Highlands area consists of approximately 40,000 acres, of which approximately 70 are devoted to viticulture. There are seven growers and two wine producers within the area now, with two new growers planning vineyards and some existing growers planning to plant more vineyards. The expansion of the Mendocino viticultural area adds approximately 10,000 acres to that area.