

of this final rule to avoid the interruption of ongoing investigations.

#### V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the manufacturers of these devices have been aware for a long time, more than 10 years, of the need to prepare PMA's for these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

#### VII. References

The following references have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857 and may be seen by interested persons between 9 a.m and 4 p.m. Monday through Friday.

1. Naim, J., and R.J. Lanzafame, "The Adjuvant Effect of Silicone Gel on Antibody Formation in Rats," *Immunological Investigations*, 22(2):151-161, 1993.

2. Bridges, A. J., C. Conley, G. Wang, D. E. Burns, and F. B. Vasey, "A Clinical and Immunologic Evaluation of Women With Silicone Breast Implants and Symptoms of Rheumatic Disease," *Annals of Internal Medicine*, 118(12):929-936, 1993.

3. Tripartite Biocompatibility Guidance for Medical Devices, Office of Device Evaluation General Program Memorandum #87-1, April 24, 1987.

#### List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

#### PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 is revised to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 876.3750 is amended by revising paragraph (c) to read as follows:

#### § 876.3750 Testicular prosthesis.

\* \* \* \* \*

(c) *Date premarket approval application (PMA) or notice of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before July 5, 1995, for any testicular prosthesis that was in commercial distribution before May 28, 1976, or that has on or before July 5, 1995, been found to be substantially equivalent to a testicular prosthesis that was in commercial distribution before May 28, 1976. Any other testicular prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 13, 1995.

#### D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95-8383 Filed 4-4-95; 8:45 am]

BILLING CODE 4160-01-F

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Part 1

[TD 8591]

RIN 1545-AT28

#### Valuation of Plan Distributions

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains 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 in certain nondecreasing annuity forms. These temporary 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. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** These regulations are effective April 5, 1995.

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

**FOR FURTHER INFORMATION CONTACT:** Linda S. F. Marshall, (202) 622-4606 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Short Description

The temporary regulations in this document set out rules for computing the amount of any benefit under a qualified defined benefit pension plan that is paid in any form other than certain annuity forms. These temporary regulations reflect changes made to the law in the Retirement Protection Act of 1994 (RPA '94) Pub. L. 103-465. Under the new law, if the annuity benefit an employee could receive under the plan is converted to a different form of benefit, the non-annuity benefit cannot be less than the value that would be determined using legally required assumptions regarding life expectancy (mortality table) and interest rate. This ensures that the non-annuity benefit will not be less valuable than the annuity benefit.

Under these temporary regulations, the mortality table used under the new law is the mortality table published by the IRS (currently a mortality table commonly used by state insurance commissioners). The interest rate used under the new law is the interest rate on 30-year Treasury securities, as published by the IRS. These temporary regulations allow an employer to choose a monthly, quarterly, or annual period during which the plan's interest rate remains constant, and allow an

employer to determine the rate up to five months before the period begins.

These temporary regulations provide that, for most pension plans in place on December 7, 1994, the employer can choose to have the new law become effective any time between December 8, 1994, and the first day of the first plan year beginning after December 31, 1999. These temporary regulations also specify how employers can amend their pension plans to change the mortality table and interest rate used to compute the amount of a distribution, without causing any prohibited reduction in benefits.

### Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 417(e). Section 417(e) was amended by RPA '94. These 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).

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 \$3,500 can be immediately distributed to a participant only with the participant's consent. 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 temporary 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.

Under § 1.417(e)-1(d), prior to amendment by these temporary regulations, the interest rate limitations of section 417(e)(3) were applied in determining whether participant or spousal consent to a distribution was necessary, in determining the present value of any accrued benefit, and in determining the amount of many types of distributions. Further, under those regulations, the present value of any optional form of benefit could not be less than the present value of the normal retirement benefit determined in accordance with the interest rate restrictions of section 417(e)(3). 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.

### 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 temporary regulations provide that the applicable mortality table as described above is to be prescribed by the Commissioner in revenue rulings, notices or other documents of general applicability. That table is set forth in Rev. Rul. 95-6, 1995-4 I.R.B. 22.

### 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 temporary regulations provide 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. 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 rates for July 1994 through February 1995 are specified as follows:

7.58 percent for July 1994, 7.49 percent for August 1994, 7.71 percent for September 1994, 7.94 percent for October 1994, 8.08 percent for November 1994, 7.87 percent for December 1994 (see Notice 95-6, 1995-5 I.R.B. 47), 7.85 percent for January 1995 (see Notice 95-9, 1995-10 I.R.B. 10), and 7.61 percent for February 1995 (see Notice 95-11, 1995-13 I.R.B. 8). The Commissioner will continue to publish this interest rate for each month, shortly after the end of 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). 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. These temporary regulations permit selection of a monthly, quarterly or annual period during which the applicable interest rate remains constant. Permitting selection of such a quarterly or annual stability period allows plans to offer greater benefit stability than is provided by the statutory rule, under which the applicable interest rate changes monthly.

These temporary regulations provide 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).

Thus, a plan may change the applicable interest rate monthly, quarterly, or annually, and may determine the rate with reference to one of the five months preceding the month, quarter, or year. For example, if an employer with a calendar year plan wishes to use the same interest rate for

all distributions in the plan year (i.e., the annual stability period) and wishes to provide 90 days for employee notices based on the actual interest rate, the plan can provide that the applicable interest rate for the entire plan year is the 30-year Treasury rate specified by the Commissioner for the prior August (i.e., five calendar months before January 1, the first day of the plan year).

#### Effective Dates

These temporary regulations are generally effective for plan years beginning after December 31, 1994.

Under section 417(e)(3)(B) and these temporary 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 present value of a distribution made before the first day of the first plan year that begins after December 31, 1999, is calculated 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.

These temporary 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 temporary 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 is subject to section 411(d)(6). Consistent with regulations in effect prior to amendment by these temporary regulations, these temporary 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 amendment's effective date or the amendment's adoption date 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.

For example, assume that a calendar year plan is amended in March 1995, effective July 1, 1995, to change the interest rate used to determine the present value of plan distributions from the PBGC interest rate determined as of January 1 of the plan year that contains the annuity starting date, to the 30-year Treasury security interest rate for August of the year before the plan year that contains the annuity starting date. The plan amendment will not be treated as violating section 411(d)(6) if 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.

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 temporary regulations provide that an interest rate may be eliminated under this section 411(d)(6) relief rule if that interest rate is the PBGC interest rate or a rate based on the PBGC interest rate. The PBGC has advised the Service and Treasury that it has not made any decision at this time on whether it will continue to publish the relevant interest rates after the year 2000. Therefore, in amending plans to

comply with these temporary regulations, employers should not rely on the continued publication of these rates by the PBGC beyond the year 2000.

These temporary 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). These temporary 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.

#### 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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)-1T 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.* For rules regarding the present value of a participant's accrued benefit and related matters, see § 1.417(e)-1T(d).

\* \* \* \* \*

**Par. 3.** § 1.417(e)-1T is added to read as follows:

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

(a) through (c) [Reserved].

(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).

(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, 1995-4 I.R.B. 22, and that the applicable interest rate for Plan A 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.* 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 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, or one plan 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) *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.

(v) *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, where 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 this actuarial basis (i.e., 7% and the UP-1984 Mortality Table) and the single sum 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 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. A nondecreasing annuity includes a QJSA, QPSA and an annuity that decreases merely because of the cessation or reduction of Social Security supplements or qualified disability payments (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 PBGC's 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—

(1) 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 29 CFR part 2619 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.* Except as provided in this paragraph (d)(10), 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).

(ii) *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. Any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective (if the amendment is effective on or after the adoption date) must use the interest rate as provided under the terms of the plan after the effective date of the amendment, 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—(A)*

*Replacement of PBGC interest rate.* 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 (even if the amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules), if the following conditions are satisfied—

(1) 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

(2) 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.

(B) *Replacement of non-PBGC interest rate.* The section 411(d)(6) relief provided in paragraph (d)(10)(iii)(A) 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 paragraphs (d)(10)(iii)(A) and (B) of this section, 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 or as the PBGC interest rate minus a specified number of basis points.

(C) *Plan amendment providing for prior determination date or up to two months earlier.* If the special rule of paragraph (d)(10)(iii)(A) of this section would apply to a plan except that the applicable interest rate is determined for a month other than the first full calendar month preceding the calendar month that contains the annuity starting date, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) if the applicable interest rate is determined for the calendar month that contains the date as of which the PBGC interest rate was determined immediately before the amendment, or for one of the two

calendar months immediately preceding that month, or if the plan amendment satisfies the conditions of paragraph (d)(10)(ii) of this section.

(D) *Examples.* The provisions of this paragraph (d)(10)(iii) 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. 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. The 6% interest rate provided for under the plan is not based on the PBGC interest rate. Therefore, 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.* (a) Employer X maintains Plan C, a calendar year plan. As of December 7, 1994, Plan C 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 C 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 3*. 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. Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) by reason of this plan amendment.

**Margaret Milner Richardson,**  
*Commissioner of Internal Revenue.*

Approved: March 15, 1995.

**Leslie Samuels,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 95-8229 Filed 4-4-95; 8:45 am]

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## DEPARTMENT OF LABOR

### Wage and Hour Division

#### 29 CFR Part 580

#### Civil Money Penalties—Procedures for Assessing and Contesting Penalties

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this document is to change the address listed in § 580.6 of Regulations 29 CFR part 580, which is used for administrative hearing requests. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

**EFFECTIVE DATE:** This rule is effective April 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219-8412. This is not a toll free number.

#### SUPPLEMENTARY INFORMATION:

##### I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.