

period to any individual employee; and, under the terms of the option or right, the amount of compensation the employee could receive is based solely on an increase in the value of the stock after the date of the grant or award. Conversely, if the amount of compensation the employee will receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (for example, in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation because it does not satisfy the requirement of this paragraph (e)(2)(vi)(A). Whether a stock option grant is based solely on an increase in the value of the stock after the date of grant is determined without regard to any dividend equivalent that may be payable, provided that payment of the dividend equivalent is not made contingent on the exercise of the option. The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

\* \* \* \* \*

(vii) \* \* \*

*Example 9.* Corporation V establishes a stock option plan for salaried employees. The terms of the stock option plan specify that no individual salaried employee shall receive options for more than 100,000 shares over any 3-year period. The compensation committee grants options for 50,000 shares to each of several salaried employees. The exercise price of each option is equal to or greater than the fair market value at the time of each grant. Compensation attributable to the exercise of the options satisfies the requirements of this paragraph (e)(2). If, however, the terms of the options provide that the exercise price is less than fair market value at the date of grant, no compensation attributable to the exercise of those options satisfies the requirements of this paragraph (e)(2) unless issuance or exercise of the options was contingent upon the attainment of a preestablished performance goal that satisfies this paragraph (e)(2). If, however, the terms of the plan also provide that Corporation V could grant options to purchase no more than 900,000 shares over any 3-year period, but did not provide a limitation on the number of shares that any individual employee could purchase, then no compensation attributable to the exercise of

those options satisfies the requirements of paragraph (e)(2)(vi) of this section.

\* \* \* \* \*

(4) \* \* \*

(iv) *Description of compensation.* Disclosure as to the compensation payable under a performance goal must be specific enough so that shareholders can determine the maximum amount of compensation that could be paid to any individual employee during a specified period. If the terms of the performance goal do not provide for a maximum dollar amount, the disclosure must include the formula under which the compensation would be calculated. Thus, if compensation attributable to the exercise of stock options is equal to the difference in the exercise price and the current value of the stock, then disclosure of the maximum number of shares for which grants may be made to any individual employee during a specified period and the exercise price of those options (for example, fair market value on date of grant) would satisfy the requirements of this paragraph (e)(4)(iv). In that case, shareholders could calculate the maximum amount of compensation that would be attributable to the exercise of options on the basis of their assumptions as to the future stock price.

\* \* \* \* \*

(f) \* \* \*

(3) *Stock-based compensation.* Paragraph (f)(1) of this section will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(2) of this section if the grant occurs on or before the earliest of the event specified in paragraph (f)(2) of this section. This paragraph does not apply to any form of stock-based compensation other than the forms listed in the immediately preceding sentence. Thus, for example, compensation payable under a restricted stock unit arrangement or a phantom stock arrangement must be paid, rather than merely granted, on or before the occurrence of the earliest of the events specified in paragraph (f)(2) of this section in order for paragraph (f)(1) to apply.

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(vi) The clarifications to paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9*, and (e)(4)(iv) of this section apply on or after June 24, 2011. The modification to paragraph (f)(3) of this section applies on or after the date of publication of the Treasury decision adopting these rules

as final regulations in the **Federal Register**.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011-15653 Filed 6-23-11; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 54

[REG-125592-10]

RIN 1545-BJ62

#### Requirements for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes Under the Patient Protection and Affordable Care Act

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the IRS is issuing an amendment to temporary regulations published July 23, 2010 under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) regarding internal claims and appeals and external review processes. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Center for Consumer Information & Insurance Oversight of the U.S. Department of Health and Human Services are issuing a substantially similar amendment to interim final regulations published July 23, 2010 with respect to group health plans and health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by July 25, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-125592-10), Room 5205, Internal Revenue Service, P.O.

Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG-125592-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-125592-10).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Karen Levin at 202-622-6080; concerning submissions of comments, Oluwafunmilayo Taylor at 202-622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

The temporary regulations published elsewhere in this issue of the **Federal Register** amend § 54.9815-2719T of the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collections of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Section 54.9815-2719T of the temporary regulations, as amended, requires both group health insurance issuers and group health plans to establish internal claims and appeals and external review processes for adverse benefit determinations. Those processes require the plan and issuer to disclose evidence relied upon in making an adverse benefit determination, to disclose any new rationale for upholding an adverse

benefit determination as part of an internal appeal, to provide notice of an adverse benefit determination and of a final internal adverse benefit determination, and to disclose the right to an external review. Under the temporary regulations, if a health insurance issuer satisfies the obligations to have effective internal claims and appeals and external review processes (including these information collection requirements that are an inherent part of those processes), those obligations are satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy those obligations to have effective internal claims and appeals and external review processes (including these information collection requirements that are an inherent part of those processes) for both the plan and the issuer in almost all cases. For this reason, these information collection requirements will not impose a significant impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

**List of Subjects in 26 CFR Part 54**

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

**PART 54—PENSION EXCISE TAXES**

**Paragraph 1.** The authority citation for part 54 continues to read in part as follows:

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

**Par. 2.** Proposed § 54.9815-2719 as published on July 23, 2010, 75 FR 43330, is amended by:

1. Revising paragraphs (b)(2)(ii)(B), (b)(2)(ii)(E)(1), (b)(2)(ii)(F), (c)(2)(xi), (c)(3), (d)(1), (d)(2)(iv), and (e).

2. Redesignating (b)(2)(ii)(E)(2), (b)(2)(ii)(E)(3), and (b)(2)(ii)(E)(4) as (b)(2)(ii)(E)(3), (b)(2)(ii)(E)(4), and (b)(2)(ii)(E)(5), respectively.

3. Adding new paragraph (b)(2)(ii)(E)(2).

The revisions and addition read as follows:

**§ 54.9815-2719 Internal claims and appeals and external review processes.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) [The text of proposed § 54.9815-2719(b)(2)(ii)(B) is the same as the text of § 54.9815-2719T(b)(2)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(E) \* \* \*

(1) [The text of proposed § 54.9815-2719(b)(2)(ii)(E)(1) is the same as the text of § 54.9815-2719T(b)(2)(ii)(E)(1) published elsewhere in this issue of the **Federal Register**.]

(2) [The text of proposed § 54.9815-2719(b)(2)(ii)(E)(2) is the same as the text of § 54.9815-2719T(b)(2)(ii)(E)(2) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(F) [The text of proposed § 54.9815-2719(b)(2)(ii)(F) is the same as the text of § 54.9815-2719T(b)(2)(ii)(F) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(xi) [The text of proposed § 54.9815-2719(c)(2)(xi) is the same as the text of § 54.9815-2719T(c)(2)(xi) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(3) [The text of proposed § 54.9815–2719(c)(3) is the same as the text of § 54.9815–2719T(c)(3) published elsewhere in this issue of the **Federal Register**].

(d) \* \* \*

(1) [The text of proposed § 54.9815–2719(d)(1) is the same as the text of § 54.9815–2719T(d)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(2) \* \* \*

(iv) [The text of proposed § 54.9815–2719(d)(2)(iv) is the same as the text of § 54.9815–2719T(d)(2)(iv) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) [The text of proposed § 54.9815–2719(e) is the same as the text of § 54.9815–2719T(e) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011–15891 Filed 6–22–11; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2011–0268]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Passaic River, Harrison, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations that govern the operation of the Amtrak’s Dock Bridge across the Passaic River, mile 5.0, at Harrison, New Jersey. The owner of the bridge has requested relief from crewing the bridge at all times because the bridge has received few requests to open during past years. It is expected that an advance notice requirement for bridge openings could provide relief to the bridge owner while continuing to meet the reasonable needs of navigation.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 23, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG–

2011–0268 using any one of the following methods:

(1) *Federal Rulemaking Portal:*

*http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

If you have questions on this proposed rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Program, telephone (617) 223–8364, e-mail *john.w.mcdonald@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

*Submitting comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0268), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at

the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rules” and insert “USCG–2011–0268” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing comments and documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2011–0268” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If