

previously furnished or otherwise made available to the parties in response to the protest. At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall respond to the request for documents in writing. The agency's response shall, at a minimum, identify whether the requested documents exist, which of the requested documents or portions thereof the agency intends to withhold, and the basis for not producing any of the requested documents or portions thereof. Any objection to the scope of the agency's proposed disclosure or nondisclosure of documents must be filed with GAO and the other parties within 2 days of receipt of this list.

(d) The report shall include the contracting officer's statement of the relevant facts, including a best estimate of the contract value, a memorandum of law, and a list and a copy of all relevant documents, or portions of documents, not previously produced, including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications; the abstract of bids or offers; and any other relevant documents. In appropriate cases, a party may request that another party produce relevant documents, or portions of documents, that are not in the agency's possession.

\* \* \* \* \*

(j) GAO may request or permit the submission of additional statements by the parties and by other parties participating in the protest as may be necessary for the fair resolution of the protest. The agency and other parties must receive GAO's approval before submitting any additional statements. GAO reserves the right to disregard material submitted without prior approval.

6. Amend § 21.4 by revising paragraphs (b) and (d) to read as follows:

**§ 21.4 Protective orders.**

\* \* \* \* \*

(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report that would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.

\* \* \* \* \*

(d) Any violation of the terms of a protective order may result in the

imposition of such sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies, restricting the individual's practice before GAO, prohibition from participation in the remainder of the protest, or dismissal of the protest.

7. Amend § 21.5 by revising paragraph (b)(1) to read as follows:

**§ 21.5 Protest issues not for consideration.**

\* \* \* \* \*

(b) *Small Business Administration issues.* (1) Small business size standards and North American Industry Classification System (NAICS) standards. Challenges of established size standards or the size status of particular firms, and challenges of the selected NAICS code may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

\* \* \* \* \*

8. Revise § 21.6 to read as follows:

**§ 21.6 Withholding of award and suspension of contract performance.**

Where a protest is filed with GAO, the contracting agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553(c) and (d); GAO does not administer the requirements to stay award or suspend contract performance under CICA at 31 U.S.C. 3553(c) and (d).

9. Amend § 21.12 by revising paragraph (a) to read as follows:

**§ 21.12 Distribution of decisions.**

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, and the agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

\* \* \* \* \*

10. Amend § 21.14 by revising paragraph (c) to read as follows:

**§ 21.14 Request for reconsideration.**

\* \* \* \* \*

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. To obtain reconsideration, the requesting party must show that our prior decision contains errors of either fact or law, or must present information

not previously considered that warrants reversal or modification of our decision; GAO will not consider a request for reconsideration based on repetition of arguments previously raised.

**Gary L. Kepplinger,**

*General Counsel, United States Government Accountability Office.*

[FR Doc. E8-5621 Filed 3-20-08; 8:45 am]

BILLING CODE 1610-02-P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 54**

[REG-110136-07]

RIN 1545-BG48

**Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual**

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

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**SUMMARY:** This document contains proposed regulations that would provide guidance relating to the application of section 4980F of the Internal Revenue Code to a plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations would also reflect certain amendments made to section 4980F by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780). These proposed regulations would affect sponsors, administrators, participants, and beneficiaries of pension plans. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by June 19, 2008. Outlines of topics to be discussed at the public hearing scheduled for July 10, 2008, at 10 a.m. must be received by June 20, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-110136-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC, 20044. Submissions may be hand-delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-110136-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, 20224 or sent via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-

110136–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Pamela R. Kinard, at (202) 622–6060; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst, *Richard.A.Hurst@irs.counsel.treas.gov*, or (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information referenced in this notice of proposed rulemaking were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1780, in conjunction with the Treasury Decision (TD 9052), relating to Notice of Significant Reduction in the Rate of Future Benefit Accrual, published on April 9, 2003 in the **Federal Register** (68 FR 17277). There are no proposals for substantive changes to this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

*Overview*

This document contains proposed amendments to 26 CFR parts 1 and 54 under section 4980F of the Internal Revenue Code (Code). Section 4980F sets forth the requirements for providing notice to certain affected persons when a plan significantly reduces future benefit accruals. A notice required under section 4980F of the Code or the parallel rules in section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA) is referred to as a “section 204(h) notice.” These proposed regulations would set forth timing rules for providing a section 204(h) notice for a plan amendment that is permitted to be effective before the applicable amendment date. In addition, the

regulations provide guidance relating to changes made in section 4980F by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA ’06).

*Section 411(d)(6) Protected Benefits*

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan. There are certain exceptions to this general rule. For example, amendments described in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008) of the Code or section 4281 of ERISA. Section 204(g) of ERISA contains parallel rules to section 411(d)(6) of the Code.

*Notice Requirements for Significant Reduction in the Rate of Future Benefit Accruals*

Section 4980F imposes an excise tax when a plan administrator fails to provide timely notice of a plan amendment that provides for a significant reduction in the rate of future benefit accrual. For this purpose, the elimination or reduction of an early retirement benefit or retirement-type subsidy is treated as having the effect of reducing the rate of future benefit accrual. Section 4980F(e)(3) provides that, except as provided in regulations, the notice must be provided within a “reasonable time” before the effective date of the plan amendment. Section 204(h) of ERISA contains parallel rules to section 4980F of the Code.

For both section 204(g) and section 204(h) of ERISA, the Secretary of the Treasury has interpretive authority over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Pursuant to section 101(a) of Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury generally has the authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA, including section 204(g) and (h) of ERISA. Thus, these proposed Treasury regulations under section 4980F of the Code would apply as well for purposes of section 204(h) of ERISA.

*Notice Requirements Relating to Plan Amendments Affecting Benefits for Prior Service*

Section 412(d)(2) of the Code (section 412(c)(8) for plan years beginning before January 1, 2008) provides special rules relating to retroactive plan amendments. Rev. Proc. 94–42 (1994–1 CB 717), see § 601.601(d)(2)(ii)(b), sets forth procedures under which a plan sponsor may file notice with and obtain approval from the Secretary of the

Treasury for a retroactive amendment described in section 412(d)(2) that reduces accrued benefits. Section 4 of Rev. Proc. 94–42 provides guidance relating to the written notice that must be provided to affected parties regarding the application for approval of a retroactive plan amendment to reduce accrued benefits under section 412(d)(2) (a “section 412(d)(2) written notice”). The content requirements of a section 412(d)(2) written notice include a description of the plan amendment and its effect, including the range in reduction of accrued benefits of participants, beneficiaries, and alternate payees.

Section 212(a) of PPA ’06 added section 432 of the Code, which provides rules relating to multiemployer plans that are in endangered or critical status. Under certain circumstances, a plan may adopt a plan amendment that reduces previously accrued benefits. Section 432(e)(8)(C) requires a plan to provide notice of the plan amendment to affected parties at least 30 days before the general effective date of the reduction. The notice must include information that is sufficient for participants and beneficiaries to understand the effect of any reduction on their benefits and a description of the possible rights and remedies of plan participants and beneficiaries.

Section 113(a)(1)(B) of PPA ’06 added Code section 436, providing rules limiting benefits and benefit accruals for single-employer plans with certain funding shortfalls. Section 101(j) of ERISA generally requires the plan administrator to provide a written notice to plan participants and beneficiaries within 30 days after the plan becomes subject to this benefit limitation.

Section 4244A of ERISA provides that a multiemployer plan in reorganization is permitted to adopt an amendment reducing or eliminating certain accrued benefits (increases adopted within the prior 5 years) attributable to employer contributions under the plan. Under section 4244A(b)(2) of ERISA, an amendment is not permitted to reduce or eliminate benefits unless notice is given to plan participants, beneficiaries, and other affected persons at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted. The notice must include certain information, including explaining the rights and remedies of participants and beneficiaries under the plan and informing the recipients that if contributions under the plan are not increased, accrued benefits under the plan for certain participants and beneficiaries will be reduced or an

excise tax will be imposed on employers.

Section 4245 of ERISA provides rules relating to suspension of benefits under insolvent multiemployer plans. If benefit payments under the plan exceed the resource benefit level for the plan year, the payment of benefits must be suspended to the extent necessary to reduce such payments to the greater of the resource benefit level or the level of basic benefits. Section 4245(e) of ERISA provides that certain plans in reorganization must provide notice to plan participants and beneficiaries that certain non-basic benefit payments will be suspended.

Section 4281 of ERISA provides rules relating to benefits under certain multiemployer terminated plans. Section 4281(c) of ERISA provides that if the value of nonforfeitable benefits exceeds the value of the plan assets, the plan must be amended to reduce benefits in excess of nonforfeitable benefits arising from increases adopted within the prior 5 years, or the level that can be provided by plan assets, if greater. The regulations at 29 CFR 4281.32 provide that a plan sponsor must notify the Pension Benefit Guaranty Corporation (PBGC) and plan participants and beneficiaries of a plan amendment reducing benefits pursuant to section 4281(c) of ERISA. The notice must be provided no later than the earlier of 45 days after the amendment reducing benefits is adopted or the date of the first reduced benefit payment. Paragraph (e) of 29 CFR 4281.32 sets forth the content requirements applicable to a notice of benefit reduction.

#### *Additional Provisions of Pension Protection Act of 2006*

Section 402 of PPA '06 provides special funding rules for plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Section 402(h)(4) of PPA '06 provides that in the case of a plan amendment adopted in order to comply with the rules in section 402 of PPA '06, any notice required under section 4980F(e) of the Code (or section 204(h) of ERISA) must be provided within 15 days of the effective date of the plan amendment. Section 402 of PPA '06 generally applies to amendments made pursuant to section 402 of PPA '06 for plan years ending after the date of enactment of PPA '06 (August 17, 2006).

Section 502(c) of PPA '06 amended section 4980F(e)(1) of the Code (and section 204(h) of ERISA) to add as a

recipient of a section 204(h) notice any employer that has an obligation to contribute to the plan. This new disclosure requirement is effective for plan years beginning after December 31, 2007.

Section 1107 of PPA '06 provides that any plan amendment made pursuant to any PPA '06 change may be retroactively effective, and, except as provided by the Secretary of the Treasury, does not violate the anti-cutback rules of section 411(d)(6) of the Code (or section 204(g) of ERISA) if, in addition to satisfying the conditions specified in section 1107(b)(2) of PPA '06, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011, with respect to governmental plans).

#### **Explanation of Provisions**

##### *PPA '06 Rules*

These proposed regulations would add contributing employers to the list of persons to whom a section 204(h) notice must be provided. A contributing employer is defined in the proposed regulations as an employer that has an obligation to contribute to a plan (within the meaning of section 4212(a) of ERISA). This requirement to give section 204(h) notice to contributing employers was added to reflect section 502(c)(2) of PPA '06. This requirement would only apply to amendments adopted in plan years beginning after December 31, 2007.

The regulations would also add a special timing rule to reflect section 402 of PPA '06. For certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline, section 204(h) notice must be provided at least 15 days before the effective date of the amendment.<sup>1</sup>

##### *Plan Amendments Reflecting a Change in Statutorily Mandated Minimum Present Value Rules*

Section 417(e)(3) provides that, in distributing the present value of an accrued benefit to a plan participant, the present value of the benefit is not permitted to be less than the present value using the applicable mortality table and the applicable interest rate, as

defined in section 417(e)(3)(B) and (C), respectively. Section 302(b) of PPA '06 amended section 417(e)(3) to provide new actuarial assumptions for calculating the minimum present value of a participant's accrued benefit. Plan sponsors have asked whether a plan amendment to reflect the change in these section 417(e)(3) statutory actuarial assumptions would trigger the requirement to provide a section 204(h) notice. Revenue Ruling 2007-67 (2007-48 IRB 1047), see § 601.601(d)(2)(ii)(b), which includes guidance on plan amendments regarding the new interest rate and mortality table under section 417(e)(3), states that certain amendments to reflect the new interest rate or mortality table for an annuity starting date in 2008 or later would not violate the anti-cutback rules of section 411(d)(6). The proposed regulations would provide that a reduced single-sum distribution resulting from an amendment to a traditional defined benefit plan to substitute the prescribed actuarial assumptions under section 417(e)(3), as amended by PPA '06, for the pre-PPA '06 actuarial assumptions under section 417(e)(3) does not require a section 204(h) notice.

##### *Interaction of the Section 204(h) Notice Timing Rules With Plan Amendments That Have a Retroactive Effective Date*

Section 1.411(d)-3(a)(1) generally provides that a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. These rules are generally based on the applicable amendment date, which is defined in § 1.411(d)-3(g)(4) as the later of the effective date of the amendment or the date the amendment is adopted. While the general rule under § 1.411(d)-3(a)(1) prohibits plan amendments that reduce a plan participant's accrued benefit, certain exceptions exist. These exceptions include amendments permitted under sections 412(d)(2), 418D, and 418E of the Code, section 4281 of ERISA, and section 1107 of PPA '06. The proposed regulations would provide a conforming amendment to § 1.411(d)-3(a)(1) to reference the rules at section 1107 of PPA '06.

The proposed regulations generally state that the effective date of an amendment that is permitted to be adopted retroactively is the date the amendment is put into effect on an operational basis, so that a section 204(h) notice must nevertheless generally be provided at least 45 days before the date the amendment is effective (15 days for multiemployer plans). The proposed regulations would add special timing rules for when a section 204(h) notice must be provided

<sup>1</sup> This timing rule is consistent with the Joint Committee on Taxation's Technical Explanation to section 402 of PPA '06, which states that the section 204(h) notice must be provided at least 15 days before the effective date of the plan amendment. See Joint Committee on Taxation, Technical Explanation of H.R. 4, the "Pension Protection Act of 2006" (JCX-38-06), August 3, 2006, 109th Cong., 2nd Sess. 87 (2006).

to recipients with respect to a section 204(h) amendment<sup>2</sup> that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. Specifically, for purposes of section 1107(b)(2)(A) of PPA '06, the proposed regulations would clarify that the date on which such a plan amendment is effective is the first day that the plan is operated as if the amendment were in effect. Thus, a section 204(h) notice must generally be provided at least 45 days (15 days for a multiemployer plan) before the amendment is effective (even though the amendment is not adopted until a later date). Except to the extent a special timing rule is set forth in these regulations, a determination of whether a section 204(h) notice is required in connection with an amendment made pursuant to section 1107 of PPA '06 should be made in accordance with the general standards set forth in § 54.4980F-1, Q&As-5, 6, 7, and 8.

The proposed regulations provide a special timing rule for section 204(h) amendments to an applicable defined benefit plan as defined in section 411(a)(13)(C)(i). The regulations provide that for any section 204(h) notice that is required to be provided in connection with an amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) that is first effective before January 1, 2009, and that limits the amount of the distribution to the account balance as permitted under section 411(a)(13)(A), the notice will not fail to be timely if provided at least 30 days before the date the amendment is first effective. This special timing rule reflects the 30-day timing rule described in Notice 2007-6 (2007-3 IRB 272), see § 601.601(d)(2)(ii)(b), which provides transitional guidance on the requirements of sections 411(a)(13) and 411(b)(5) of the Code.<sup>3</sup> The proposed regulations would permit a plan amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) to use this special timing rule through the end of 2008. Thereafter, the general 45-day timing rule would apply to such amendments.

<sup>2</sup> A section 204(h) amendment is defined in Q&A-4(b) of § 54.4980F-1 of the Treasury Regulations as an amendment for which section 204(h) notice is required.

<sup>3</sup> Section B.4 of Notice 2007-6 provides that, in the case of a plan amendment that is permitted to reduce benefit accruals, a section 204(h) notice must be provided at least 30 days before the amendment is effective. This rule would require the notice to be provided at least 30 days before the earliest date on which the plan is operated in accordance with the amendment.

#### *Interaction of Section 204(h) Notice Requirements With Other Notice Requirements Relating to Plan Amendments*

As explained earlier in this preamble, under the heading "Notice Requirements Relating to Plan Amendments Affecting Benefits for Prior Service," both the Code and ERISA include a number of notice requirements for plan amendments that are permitted to reduce or eliminate accrued benefits. These notice requirements are in addition to the notice requirements under section 4980F of the Code and section 204(h) of ERISA. To eliminate the need for a plan to provide multiple notices with substantially the same function and information to affected persons, these proposed regulations would provide that if a plan provides one of these notices in accordance with the applicable standards for such notices, the plan will be treated as having complied with the requirement to provide a section 204(h) notice with respect to a section 204(h) amendment. Under the proposed regulations, this treatment would apply to the following notices:

- A notice required under Rev. Proc. 94-42 relating to retroactive plan amendments that reduce accrued benefits described in section 412(d)(2);
- A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 436 of the Code (section 206(g) of ERISA);
- A notice required under 4244A(b) of ERISA for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;
- A notice required under section 4245(e) of ERISA, relating to the effects of the insolvency status for a multiemployer plan; and
- A notice required under section 4281 of ERISA and 29 CFR 4281.32 for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

#### *Timing and Content Rules for Multiemployer Plans in Endangered or Critical Status*

Section 432, relating to multiemployer plans that are in endangered or critical status (as defined in section 432(b)), permits a plan amendment to be adopted that reduces prior accruals under certain circumstances. With respect to any such amendment for a plan that is in critical status, section 432(e)(8)(C) requires

notice of the plan amendment. Notice under section 432(e)(8)(C) must be provided at least 30 days before the general effective date of the reduction. Section 432(e)(8)(C) requires the notice to include information that is sufficient for participants and beneficiaries to understand the effect of any reduction on their benefits and a description of the possible rights and remedies of participants and beneficiaries, including contact information for the Department of Labor for further assistance and information where appropriate.

As discussed in this preamble under the heading "Interaction of the Section 204(h) Timing Rules with Plan Amendments that Have a Retroactive Effective Date," PPA '06 requires that notice be given 30 days before the general effective date for an amendment to a plan in critical status under section 432(e)(8)(C). Q&A-9(c) of § 54.4980F-1 of the Treasury Regulations provides that a section 204(h) amendment made in the case of a multiemployer plan must be provided at least 15 days before the effective date of the amendment. Compliance with the 30-day timing rule of section 432(e)(8)(C) notice would thus also satisfy this 15-day timing rule. These proposed regulations also include a rule under which the content of a notice under 432(e)(8)(C) would also satisfy the content requirements for a section 204(h) notice. As a result, under these proposed regulations, any notice for a multiemployer plan in critical status that satisfies the timing and content requirements under section 432(e)(8)(C) would be treated as satisfying the timing and content requirements of a section 204(h) notice.

However, in the case of an amendment to which section 432 applies for a multiemployer plan in endangered status, the normal timing and content rules for a section 204(h) notice under section 4980F would apply (so that any required section 204(h) notice must be provided at least 15 days before the effective date).

#### *Delegation of Authority to the Commissioner*

The proposed regulations would also delegate to the Commissioner of the Internal Revenue Service the authority to publish revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) under section 4980F of the Code (which would also apply to section 204(h) of ERISA) that the Commissioner determines to be necessary or appropriate with respect to a section 204(h) amendment that applies with respect to benefits accrued before the

applicable amendment date but that does not violate section 411(d)(6) of the Code. This delegation of authority provides the Commissioner with greater flexibility to develop special rules to address the limited circumstances in which Congress permits a plan to be amended to reduce benefits accrued before the adoption date of the plan amendment. This delegation of authority also extends to circumstances in which a section 204(h) amendment may require another notice in addition to a section 204(h) notice, regardless of whether that amendment reduces benefits accrued before the adoption date of the amendment. Often these notices must provide content requirements similar to a section 204(h) notice. This delegation would permit the Commissioner to treat plans providing these other notices as having complied with the requirement to provide a section 204(h) notice, thus eliminating unnecessary overlap in the administration of plans.

#### Proposed Effective Dates

These regulations are generally proposed to be applicable to section 204(h) amendments that are effective on or after January 1, 2008. However, for any section 204(h) amendment that is adopted after the effective date of the amendment, the clarification of the effective date of the amendment in these proposed regulations is applicable to those amendments on or after July 1, 2008. In addition, for any amendment to which the proposed regulations would otherwise apply, no inference is intended as to when a section 204(h) notice must be provided if the amendment is effective before July 1, 2008.

As described in this preamble under the heading "Interaction of the Section 204(h) Notice Timing Rules with Plan Amendments that Have a Retroactive Effective Date," with respect to any section 204(h) amendment to a lump sum-based benefit formula (or any other amendment adopted pursuant to section 701 of PPA '06), the special rules under the proposed regulations relating to an amendment that applies with respect to benefits accrued before the applicable amendment date apply to amendments adopted after December 21, 2006 (the date on which Notice 2007-6 was published). However, the special 30-day timing rule for providing a section 204(h) notice applies to such amendments effective on or after December 21, 2006, and not later than December 31, 2008. With respect to the rule relating to adding contributing employers to the list of section 204(h) recipients, the effective date is proposed

to apply to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. It is hereby certified that the collection of information in this regulation would not have a significant impact on a substantial number of small entities. This certification is based on the fact that this regulation only provides guidance on how to satisfy existing collection of information requirements. Accordingly, a Regulatory Flexibility Analysis is not required. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 10, 2008, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by June 19, 2008 and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight

(8) copies) by June 20, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.411(d)-3 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

The revision reads as follows:

##### § 1.411(d)-3 Section 411(d)(6) protected benefits.

(a) *Protection of accrued benefits*—(1) *General rule.* Under section 411(d)(6)(A), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (see, for example, sections 418D and 418E of the Internal Revenue Code, and section 1107 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780, 1063)).

\* \* \*

\* \* \* \* \*

#### PART 54—PENSION EXCISE TAXES

**Par. 3.** The authority citation for part 54 continues to read in part as follows:

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

Section 54.4980F-1 also issued under 26 U.S.C. 4980F and section 1107 of the Pension Protection Act of 2006, Public Law 109-780 (120 Stat. 780). \* \* \*

**Par. 4.** Section 54.4980F-1 is amended by:

1. Revising the second sentence of A-1(a).
2. Redesignating A-8(d) as A-8(e) and adding new A-8(d).
3. Revising the first sentence of A-9(a), A-9(b), and A-9(c), and revising A-9(d)(1).
4. Adding A-9(f) and A-9(g).
5. Revising the first sentence of A-10(a).
6. Revising A-11(a)(1) and adding A-11(a)(7).
7. Adding A-18(a)(4) and A-18(a)(5).
8. Revising A-18(b)(1) and adding (b)(3)(i), (b)(3)(ii), and (b)(3)(iii).

These additions and revisions read as follows:

**§ 54.4980F-1 Notice requirements for certain pension plan amendments significantly reducing the rate of future benefit accrual.**

\* \* \* \* \*

A-1. (a) *Requirements of Internal Revenue Code section 4980F(e) and ERISA section 204(h).* \* \* \* The notice is required to be provided to plan participants and alternate payees who are applicable individuals (as defined in Q&A-10 of this section), to certain employee organizations, and to contributing employers (as described in Q&A-10 of this section).

\* \* \* \* \*

A-8. \* \* \*

(d) *Plan amendments reflecting a change in statutorily mandated minimum present value rules.* If a defined benefit plan offers a distribution to which the minimum present value rules of section 417(e)(3) apply (other than a payment to which section 411(a)(13)(A) applies), and the plan is amended to reflect the changes to the applicable interest and mortality assumptions in section 417(e)(3) made by PPA '06 (and no change is made in the dates on which the payment will be made), no section 204(h) notice is required to be provided.

\* \* \* \* \*

A-9. (a) *45-day general rule.* Except as otherwise provided in this Q&A-9, section 204(h) notice must be provided at least 45 days before the effective date of any section 204(h) amendment. \* \* \*

(b) *15-day rule for small plans.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, section 204(h) notice must be provided at least 15 days before the

effective date of any section 204(h) amendment in the case of a small plan. \* \* \*

(c) *15-day rule for multiemployer plans.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a multiemployer plan. \* \* \*

(d) *Special timing rule for business transactions—(1) 15-day rule for section 204(h) amendment in connection with an acquisition or disposition.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, if a section 204(h) amendment is adopted in connection with an acquisition or disposition, section 204(h) notice must be provided at least 15 days before the effective date of the section 204(h) amendment.

\* \* \* \* \*

(f) *Special timing rule for certain plans maintained by commercial airlines.* See section 402 of the Pension Protection Act of 2006, Public Law 109-780 (120 Stat. 780) (PPA '06) for a special rule that applies to certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Under this special rule, section 204(h) notice must be provided at least 15 days before the effective date of the amendment.

(g) *Special timing rules relating to certain section 411(d)(6) plan amendments—(1) Plan amendments permitted to reduce prior accruals.* This paragraph (g) generally provides special rules with respect to a plan amendment that would not violate section 411(d)(6) even if the amendment applies with respect to benefits accrued before the applicable amendment date. Thus, for example, this paragraph (g) applies to amendments that are permitted to be effective retroactively under section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008), 418D, or 418E of the Code, section 4281 of ERISA, or section 1107 of PPA '06. See, generally, § 1.411(d)-3(a)(1).

(2) *General timing rule for amendments to which this paragraph (g) applies.* For an amendment to which this paragraph (g) applies, the amendment is effective on the first date on which the plan is operated as if the amendment were in effect. Thus, except as otherwise provided in this paragraph (g), a section 204(h) notice for an amendment to which paragraph (a) of this section applies that is adopted after the effective date of the amendment

must be provided, with respect to any applicable individual, at least 45 days before (or such other date as may apply under paragraphs (b), (c), (d), or (f) of this Q&A-9) the date the amendment is effective.

(3) *Special rules for section 204(h) notices provided in connection with other disclosure requirements—(i) In general.* Notwithstanding the requirements in this Q&A-9 and Q&A-11 of this section, if a plan provides one of the notices in paragraph (g)(3)(ii) of this Q&A-9 in accordance with the applicable timing and content rules for such notice, the plan is treated as providing a section 204(h) notice with respect to a section 204(h) amendment and is treated as satisfying the timing rules of this Q&A-9 and the content rules of paragraphs (a)(3), (4), and (6) of Q&A-11 of this section.

(ii) *Notice requirements.* The notices in this paragraph (g)(3)(ii) are—

(A) A notice required under any revenue ruling, notice, or other guidance published under the authority of the Commissioner in the Internal Revenue Bulletin to affected parties in connection with a retroactive plan amendment described in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008);

(B) A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 206(g) of ERISA (section 436 of the Code);

(C) A notice required under 4244A(b) of ERISA for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;

(D) A notice required under section 4245(e) of ERISA, relating to the effects of the insolvency status for a multiemployer plan; and

(E) A notice required under section 4281 of ERISA for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

(4) *Delegation of authority to Commissioner.* The Commissioner may provide special rules under section 4980F, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), that the Commissioner determines to be necessary or appropriate with respect to a section 204(h) amendment—

(i) That applies to benefits accrued before the applicable amendment date but that does not violate section 411(d)(6) or

(ii) For which there is a required notice with timing and content

requirements similar to a section 204(h) notice.

\* \* \* \* \*

A-10. (a) *In general.* Section 204(h) notice must be provided to each applicable individual, to each employee organization representing participants who are applicable individuals, and, for plan years beginning after December 31, 2007, to each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) to the plan. \* \* \*

\* \* \* \* \*

A-11. (a) *Explanation of notice requirement—(1) In general.* Section 204(h) notice must include sufficient information to allow applicable individuals to understand the effect of the plan amendment. In order to satisfy this rule, a plan administrator providing section 204(h) notice must generally satisfy paragraphs (a)(2), (3), (4), (5), and (6) of this Q&A-11. See paragraph (a)(7) of this Q&A-11 for a special rule relating to section 204(h) notices provided in connection with a notice required under section 432(e)(8)(C). See paragraph (g)(3) of Q&A-9 of this section for special rules relating to section 204(h) notices provided in connection with certain other written notices. See also paragraph (g)(4) of Q&A-9 of this section for a delegation of authority to the Commissioner to provide special rules.

\* \* \* \* \*

(7) *Information in section 204(h) notice provided in connection with a notice required under section 432(e)(8)(C).* The information required in a notice under section 432(e)(8)(C) is treated as satisfying the content requirements of paragraphs (a)(3), (4), and (6) of this Q&A-11 for a section 204(h) notice.

\* \* \* \* \*

A-18. (a) \* \* \*  
(4) *Special effective date for certain section 204(h) amendments made by plans of commercial airlines.* Section 402 of PPA '06 applies to section 204(h) amendments adopted in plan years ending after August 17, 2006.

(5) *Special effective date for rule relating to contributing employers.* Section 502 of PPA '06, which amended section 4980F(e)(1) of the Code, applies to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

(b) *Regulatory effective date—(1) General effective date.* Except as otherwise provided in this paragraph (b), section 4980F and section 204(h) of ERISA, as amended by EGTRRA, apply to plan amendments taking effect on or after June 7, 2001 (statutory effective

date), which is the date of enactment of EGTRRA.

\* \* \* \* \*

(3) *Effective dates for Q&A-9(g)(1), (g)(3), and (g)(4) and Q&A-11(a)(7)—(i) General effective date.* Except as provided in Q&A-18(b)(3)(ii) or (b)(3)(iii) of this section, the rules in Q&A-9(g)(1), (g)(3), and (g)(4) and Q&A-11(a)(7) of this section apply to amendments that are effective on or after January 1, 2008.

(ii) *Effective date for Q&A-9(g)(2).* Except as provided in Q&A-18(b)(3)(iii) of this section, the rules in Q&A-9(g)(2) of this section apply to amendments that are effective on or after July 1, 2008.

(iii) *Special rules for section 204(h) amendments to applicable defined benefit plan.* Notwithstanding paragraph (b)(3)(i) or (b)(3)(ii) of this Q&A-18, with respect to any section 204(h) notice provided in connection with a section 204(h) amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) to limit distributions as permitted under section 411(a)(13)(A) for distributions made after August 17, 2006, that is made pursuant to section 701 of PPA '06, the special rules in paragraphs (g)(1) and (2) of Q&A-9 of this section apply to amendments made effective after December 21, 2006. For such an amendment that is effective not later than December 31, 2008, section 204(h) notice does not fail to be timely if the notice is provided at least 30 days, rather than 45 days, before the date that the amendment is first effective.

\* \* \* \* \*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8-5625 Filed 3-20-08; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-143468-07]

RIN 1545-BH23

#### Classification of Certain Foreign Entities

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

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

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal**

**Register**, the IRS and the Treasury Department are issuing temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of Bulgarian public limited liability companies consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. They will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007. The text of the 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 June 19, 2008.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-143468-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-143468-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-143468-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, S. James Hawes, (202) 622-3860; concerning submissions of comments, Kelly Banks, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in this issue of the **Federal Register** amend and revise 26 CFR part 301 relating to section 7701 of the Internal Revenue Code. The temporary regulations add certain business entities to the list of foreign business entities that are always classified as corporations for Federal tax purposes. The preamble to the temporary regulations explains both 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 been determined that section 553(b) of the Administrative Procedure Act (5