Issued in Kansas City, Missouri, on July 7, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17566 Filed 7–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–23–AD; Amendment 39–13210; AD 2003–13–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) Models 250–C30R/3, –C30R/3M, –C47B, and –C47M Turboshaft Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–13–10, applicable to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) Models 250–C30R/3, –C30R/3M, –C47B, and –C47M turboshaft engines. AD 2003–13–10 was published in the **Federal Register** on June 30, 2003 (68 FR 38590). In the compliance section, paragraph (f) incorrectly references a compliance date of July 15, 2003 and should reference a compliance date of July 31, 2003. This document corrects that date. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Khailaa Hosny, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7134; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR DOC. 03–15993, applicable to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) Models 250–C30R/3, –C30R/3M, –C47B, and –C47M turboshaft engines, was published in the **Federal Register** on June 30, 2003 (68 FR 38590). The following correction is needed:

On page 38592, in the first column, under Initial Inspection heading, paragraph (f), fifth line, which reads ''no later than July 15, 2003, in accordance * * * '' is corrected to read ''no later than July 31, 2003, in accordance * * *''.

Issued in Burlington, MA, on July 10, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–17950 Filed 7–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9076]

RIN 1545–AX34

Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the special rule added by the Small Business Job Protection Act of 1996 which permits the required written explanations of certain benefits to be provided by qualified retirement plans to plan participants after the annuity starting date. These final regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans.

DATES: Effective Date: These regulations are effective July 16, 2003.

Applicability Date: These regulations apply to plan years beginning on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Walsh (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been 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 1545–1724.

The collection of information in this final regulation is in § 1.417(e)–1(b)(3)(iv)(B) and § 1.417(e)–1(b)(3)(v)(A). This collection of information is required by the IRS to ensure that the participant and the participant's spouse consent to a form of distribution from a qualified retirement plan that may result in reduced periodic payments.

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.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might 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

This document contains amendments to 26 CFR part 1 under section 417(a)(7). On January 17, 2001, a notice of proposed rulemaking (REG–109481–99) was published in the **Federal Register** (66 FR 3916) under section 417(a)(7) of the Internal Revenue Code. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

Section 401(a)(11) of the Internal Revenue Code provides that, subject to certain exceptions, all distributions from a qualified plan must be made in the form of a qualified joint and survivor annuity (QJSA). One such exception is provided in section 417, which allows a participant to elect to waive the QJSA in favor of another form of distribution. Section 417(a)(2) provides that, for the waiver to be valid, the participant's spouse must consent to the waiver. Section 417(a)(3)(A) requires a qualified plan to provide to each participant, within a reasonable period of time before the annuity starting date, a written explanation (QJSA explanation) that describes the QJSA, the right to waive the QJSA, and the rights of the participant's spouse.

Section 417(a)(7), which was added to the Code by section 1451(a) of the Small Business Job Protection Act of 1996,

Public Law 104–188 (110 Stat. 1755) (SBJPA), creates an exception to the rules of section 417(a)(3)(A), effective for plan years beginning after December 31, 1996. Section 417(a)(7)(A) provides that, notwithstanding any other provision of section 417(a), a plan may furnish the QJSA explanation after the annuity stating date, as long as the applicable election period is extended for at least 30 days after the date on which the explanation is furnished. Thus, section 417(a)(7)(A) allows the annuity starting date to be a date that is earlier than the date the QJSA explanation is provided, thereby allowing the retroactive payment of benefits that are attributable to the period before the QJSA explanation is provided. Section 417(a)(7)(A)(ii) provides that the Secretary may limit the application of the provision permitting the selection of a retroactive annuity starting date by regulations, except that the regulations may not limit the period of time by which the annuity starting date precedes the furnishing of the written explanation other than by providing that the retroactive annuity starting date may not be earlier than termination of employment.

Section 205(c)(8) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), provides a parallel rule to section 417(a)(7) of the Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to issue regulations limiting the application of the general rule. Thus, Treasury regulations issued under section 417(a)(7) of the Code apply as well for purposes of section 205(c)(8) of ERISA.

Explanation of Provisions

In accordance with section 417(a)(7)(A), these regulations provide that the QJSA explanation may be furnished on or after the annuity starting date under certain circumstances. The regulations refer to the annuity starting date in such cases as the ''retroactive annuity starting date'', define how payments are made in the case of a retroactive annuity starting date, and set conditions for the use of a retroactive annuity starting date.

Like the proposed regulations, the final regulations provide that a retroactive annuity starting date may be used only if the plan provides for it and the participant affirmatively elects to use the retroactive annuity starting date. If a participant affirmatively elects a retroactive annuity starting date, the participant must be put in approximately the same situation he or she would have been in had benefit payments actually commenced on the retroactive annuity starting date. Accordingly, in the case where a participant affirmatively elects a retroactive annuity starting date, the plan benefits must be determined as of that retroactive annuity starting date (including the application of section 415 and, if applicable, section 417(e)(3) as of that retroactive annuity starting date). If the plan benefits are determined in that manner, future periodic payments for a participant who elects a retroactive annuity starting date will be the same as the periodic payments that would have been paid to the participant had payments actually commenced on the retroactive annuity starting date. In addition, the participant must receive a make-up amount to reflect any missed payments (with an appropriate adjustment for interest from the date the payments would have been made to the date of actual payment).

Several commentators suggested that an adjustment for interest should not be required where the period between the retroactive annuity starting date and the date payments begin was less than three or four months. It was argued that the requirement of an interest adjustment in such a case may create burdens for the plan that are more significant that the additional money that may be paid to the participant. The Treasury Department and the IRS continue to believe that an appropriate adjustment for interest is needed for make-up payments. Thus, the final regulations retain the rule that an appropriate adjustment is required for make-up payments. The extent to which an adjustment is appropriate for a particular make-up payment depends on the facts and circumstances related to that payment.

The final regulations retain the rules from the proposed regulations that provide that the notice, consent, and election rules of section 417(a)(1), (2), and (3) apply to the retroactive payment of benefits but with several modifications. These modifications generally reflect the fact that the existing timing rules relating to notice and consent are generally determined with reference to an annuity starting date that is after the furnishing of the QJSA explanation by a period of up to 90 days.[1] If legislation currently pending in Congress changing the 90-day QJSA election period to 180 days is enacted, it is anticipated that the regulations will be modified to reflect that change.

The final regulations also retain the special spousal consent rule provided for under the proposed regulations. Under this special rule, the participant's spouse as of the time distributions actually commence must consent to the retroactive annuity starting date election, if the survivor payments under the retroactive annuity are less than under a QJSA with an annuity starting date after the date the QJSA explanation was provided. This special rule applies even if the form of benefit that the participant elects as of the retroactive annuity starting date is a QJSA. Thus, for example, where a QJSA that begins after the QJSA explanation is furnished would provide $1,000 monthly to the participant with a survivor annuity of $500 monthly to the spouse, and a QJSA with a retroactive annuity starting date would provide $900 monthly to the participant with a survivor annuity of $450 monthly to the spouse, together with a $20,000 make-up payment to the participant, the participant would be required to obtain the consent of the current spouse in order to elect the retroactive annuity starting date. Spousal consent would be required in this example because the spouse has a statutory entitlement to a survivor benefit of at least $500 per month under a QJSA with a current annuity starting date.

Various comments were received regarding this spousal consent requirement. For example, it was suggested that spousal consent should not be required in the cases of short delay if the QJSA form is elected, or where the survivor benefit under the retroactive annuity starting date is at least 95% of the survivor annuity payable under a current QJSA, because requiring consent in such a case would create additional work and confusion and result in little benefit to the spouse. The regulations are not changed in this regard, as the Treasury Department and the IRS believe that spousal protection cannot be diminished below the statutorily prescribed QJSA without spousal consent. However, these regulations provide that such consent is only necessary where the survivor annuity is less than 50% of the amount of the annuity payable during the life of the participant under a currently commencing QJSA. Thus, in the

[1] For example, section 417(a)(1) provides that a participant may elect to waive the QJSA within the ''applicable election period'' which is defined by section 417(a)(6) as the 90-day period ending on the annuity starting date. Similarly, § 1.417(e)–1(b)(3)(i) provides that the written consent of the plan participant and the participant's spouse must be made no more than 90 days before the annuity starting date. Also, § 1.417(e)–1(b)(3)(ii) provides that the QJSA explanation must generally be provided no less than 30 days and no more than 90 days before the annuity starting date.

example provided above, if the participant elected a QJSA with a retroactive annuity starting date and a 66⅔% survivor annuity, the QJSA would provide $840 monthly to the participant with a survivor annuity of $560 to the participant's spouse and a make-up payment of $18,666. Spousal consent is not required in such a case because the $560 survivor annuity exceeds the minimum permissible under a currently commencing QJSA.

The proposed regulations impose an additional condition on the availability of a retroactive annuity starting date, regarding the permissible amount of the distribution under sections 417(e)(3) (if applicable) and 415. To satisfy this condition, the distribution must be adjusted, if necessary, to satisfy the requirements of sections 417(e)(3) (if applicable) and 415 where the date the distribution commences is substituted for the annuity starting date.

Several comments raised concerns regarding the requirement that sections 415 and 417(e)(3) be satisfied as of the date of distribution as well as the retroactive annuity starting date. Some commentators suggested that testing whether the distributions satisfy section 415 as of the date of distribution could be particularly restrictive for multiemployer plans. The commentators noted, for example, that for a participant who left covered service under a multiemployer plan at age 60 and retires at age 68 under a plan with an age-62 normal retirement age, the amount payable in the year of benefit commencement, as calculated for purposes of section 415, could well be higher than 100% of that participant's average compensation for his high three years and thus would violate section 415.[2]

The IRS and Treasury Department believe this second test is generally needed to stop participants from using the retroactive annuity starting date as a means of receiving benefits in excess of the section 415 limits. However, the IRS and Treasury Department have weighed the importance of compliance with this requirement against the associated burdens and have concluded that testing for section 415 compliance as of the date distributions commence may not be needed in every case. Thus, the final regulations do not apply the requirement that satisfaction of the benefit limitations of section 415 be demonstrated as of the date distributions commence in the case of a distribution that commences no more than twelve months after the retroactive annuity starting date, unless the form of benefit (as of the retroactive annuity starting date) is a form of benefit subject to the valuation rules of section 417(e)(3). For example, in the case of a life annuity distribution, compliance with section 415 need not be demonstrated as of the date of distribution where that date is no more than twelve months after the retroactive annuity starting date. However, if the distribution were a single sum distribution, compliance with section 415 would need to be tested as of the actual commencement date.

Some commentators also objected to the rule in the proposed regulation that required the plan to comply with the valuation rules of section 417(e)(3) as of the date of distribution. The IRS and Treasury Department continue to believe that a participant should not be receiving a smaller lump sum through the election of a retroactive annuity starting date than would be available for a current annuity starting date. Accordingly, these regulations adopt the rules of the proposed regulations regarding the requirements of section 417(e)(3) with a clarification relating to the application of section 417(e)(3). Under this clarification, in the case of a form of benefit that would have been subject to section 417(e)(3) if distributions had commenced as of the retroactive annuity starting date, the distribution pursuant to a retroactive annuity starting date election must be no less than the distribution produced by applying the applicable interest rate and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. Thus, for example, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the straight life annuity payable at normal retirement age, then the amount of the distribution must be no less than the present value of the annuity payable at normal retirement age, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date. Likewise, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the early retirement annuity payable as of the retroactive annuity starting date, then the amount of the distribution must be no less than the present value of the early retirement annuity payable as of the distribution date, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date.

The final regulations retain the rule of the proposed regulations that the determination of whether the valuation rules of section 417(e)(3) apply is based upon the benefit form as of the retroactive annuity starting date. Accordingly, a distribution option that is a non-decreasing benefit under § 1.417(e)–1(d)(6) does not become subject to the valuation rules of section 417(e)(3) merely because of the make-up payments for the period between the retroactive annuity starting date and the date distributions actually commence.

Similarly, the final regulations provide that annuity payments that otherwise satisfy the requirements for a QJSA under section 417(b) will not fail to be treated as a QJSA for purposes of section 415(b)(2)(B) because a retroactive annuity starting date is elected and a make-up payment is made. Further, to address concerns raised by commentators, these regulations provide that plan distributions may be considered to be a series of substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) even though the plan distributes a make-up payment to a participant who has elected a retroactive annuity starting date.

One commentator suggested that make-up payments made pursuant to a retroactive annuity starting date should be considered to be part of a series of substantially equal periodic payments for purposes of the eligible rollover distribution definition of section 402(c)(4)(A). However, these regulations do not address this issue. Section 1.402(c)–2, Q&A–6 provides that an adjustment in a payment that is part of a series of substantially equal periodic payments will be treated as part of the series of substantially equal periodic payments for purposes of section 402(c)(4)(A) where the adjustment was due solely to reasonable administrative error or delay. To ensure that any rule applicable to make-up payments under this regulation is consistent with the rules generally applicable to independent payments under Q&A–6, the IRS and Treasury Department anticipate reviewing these rules and issuing guidance.

Two commentators suggested that defined contribution plans should be allowed to adopt provisions for

[2] After the comments relating to multiemployer plans were received, section 415(b)(11) was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law No. 107–16, to provide that the 100% test of section 415(b)(1)(B) no longer applies to multiemployer plans.

retroactive annuity starting dates. One of these commentators suggests that the proposed regulations would prohibit a defined contribution plan from making payments to cover amounts that were unpaid due to an administrative oversight. This commentator adds that such a prohibition may cause the plan to fail to provide required distributions under section 401(a)(9). The IRS and Treasury Department continue to believe that the rules applicable to retroactive annuity starting dates are relevant only to defined benefit plans because the benefit provided by a defined contribution plan is equal to the account balance and the concerns addressed in these regulations are generally not relevant in such a case. Moreover, the problem raised by the commentator appears to relate to an administrative delay in making a payment (which is an issue covered under § 1.401(a)–20, A–10(b)(3)), rather than the topic of these regulations. In any event, a plan must provide all distributions required by section 401(a)(9) and these regulations do not affect that requirement.

One commentator noted that some plans currently allow retroactive annuity starting dates in reliance upon a good faith interpretation of the statute and existing regulations. This commentator suggested that some of the sponsors of these plans may not wish to provide retroactive annuity starting dates in light of these regulations and requested that the IRS and Treasury Department confirm that plan sponsors who currently allow retroactive annuity starting dates will not violate the anti-cutback rules of section 411(d)(6) if they choose to amend these plans to restrict the availability of retroactive annuity starting dates in the future. The issues raised in this comment are not addressed in this Treasury decision. It is anticipated that such plan amendments will be governed by regulations to be issued under section 411(d)(6) pursuant to section 645 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 117).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations require the collection of plan participants' written elections requesting qualified retirement plan distributions, and written spousal consent to these distributions, under limited circumstances. It is anticipated that most small businesses affected by these regulations will be sponsors of qualified retirement plans. Since these written participant elections and written spousal consents are required to be collected only for certain distributions, and since, in the case of a small plan, there will be relatively few distributions per year (and even fewer that are subject to these requirements), small plans that provide distributions for which this collection of information is required will only have to collect a small number of participant elections and spousal consents as a result of these regulations. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Robert M. Walsh and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are 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 * * *
Section 1.417(e)–1(b)(3) also issued under 26 U.S.C. 417(a)(7)(A)(ii); * * *

■ **Par. 2.** Section 1.417(e)–1 is amended by:

■ 1. Revising paragraphs (b)(3)(i), (b)(3)(ii) introductory text, and (b)(3)(ii)(C).

■ 2. Redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as paragraphs (b)(3)(viii) and (b)(3)(ix), respectively.

■ 3. Adding new paragraphs (b)(3)(iii) through (b)(3)(vii).

The additions and revisions read as follows:

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

* * * * *

(b) * * *

(3) * * * (i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date, and, except as otherwise provided in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section, no later than the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date, except as provided in paragraph (b)(3)(iv) of this section regarding retroactive annuity starting dates. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the written explanation was provided to the participant less than 30 days before the annuity starting date, provided that the following conditions are met:

* * * * *

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant.

* * * * *

(iii) The plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant (and before the date that distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section), provided that, except as otherwise provided in paragraph (b)(3)(vii) of this section regarding administrative delay, distributions commence not more than 90 days after the explanation of the QJSA is provided.

(iv) *Retroactive annuity starting dates.* (A) Notwithstanding the requirements of paragraphs (b)(3)(i) and (ii) of this section, pursuant to section 417(a)(7), a defined benefit plan is permitted to provide benefits based on a retroactive annuity starting date if the requirements described in paragraph (b)(3)(v) of this section are satisfied. A defined benefit plan is not required to provide for retroactive annuity starting dates. If a plan does provide for a retroactive annuity starting date, it may impose conditions on the availability of a

retroactive annuity starting date in addition to those imposed by paragraph (b)(3)(v) of this section, provided that imposition of those additional conditions does not violate any of the rules applicable to qualified plans. For example, a plan that includes a single sum payment as a benefit option may limit the election of a retroactive annuity starting date to those participants who do not elect the single sum payment. A defined contribution plan is not permitted to have a retroactive annuity starting date.

(B) For purposes of this section, a "retroactive annuity starting date" is an annuity starting date affirmatively elected by a participant that occurs on or before the date the written explanation required by section 417(a)(3) is provided to the participant. In order for a plan to treat a participant as having elected a retroactive annuity starting date, future periodic payments with respect to a participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the participant had payments actually commenced on the retroactive annuity starting date. The participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). Thus, the benefit determined as of the retroactive annuity starting date must satisfy the requirements of sections 417(e)(3), if applicable, and section 415 with the applicable interest rate and applicable mortality table determined as of that date. Similarly, a participant is not permitted to elect a retroactive annuity starting date that precedes the date upon which the participant could have otherwise started receiving benefits (*e.g.*, in the case of an ongoing plan, the earlier of the participant's termination of employment or the participant's normal retirement age) under the terms of the plan in effect as of the retroactive annuity starting date. A plan does not fail to treat a participant as having elected a retroactive annuity starting date as described in this paragraph (b)(3)(iv)(B) merely because the distributions are adjusted to the extent necessary to satisfy the requirements of paragraph (b)(3)(v)(B) and (C) of this section relating to sections 415 and 417(e)(3).

(C) If the participant's spouse as of the retroactive annuity starting date would not be the participant's spouse determined as if the date distributions commence was the participant's annuity starting date, consent of that former spouse is not needed to waive the QJSA with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order (as defined in section 414(p)).

(D) A distribution payable pursuant to a retroactive annuity starting date election is treated as excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution form would have been described in paragraph (d)(6) of this section had the distribution actually commenced on the retroactive annuity starting date. Similarly, annuity payments that otherwise satisfy the requirements of a QJSA under section 417(b) will not fail to be treated as a QJSA for purposes of section 415(b)(2)(B) merely because a retroactive annuity starting date is elected and a make-up payment is made. Also, for purposes of section 72(t)(2)(A)(iv), a distribution that would otherwise be one of a series of substantially equal periodic payments will be treated as one of a series of substantially equal periodic payments notwithstanding the distribution of a make-up payment provided for in paragraph (b)(3)(iv)(B) of this section.

(E) The following example illustrates the application of paragraph (b)(3)(iv)(D) of this section:

Example. Under the terms of a defined benefit plan, participant A is entitled to a QJSA with a monthly payment of $1,500 beginning as of his annuity starting date. Due to administrative error, the QJSA explanation is provided to A after the annuity starting date. After receiving the QJSA explanation A elects a retroactive annuity starting date. Pursuant to this election, A begins to receive a monthly payment of $1,500 and also receives a make-up payment of $10,000. Under these circumstances the monthly payments may be treated as a QJSA for purposes of section 415(b)(2)(B). In addition, the monthly payments of $1,500 and the make-up payment of $10,000 may be treated as part of as series of substantially equal periodic payments for purpose of section 72(t)(2)(A)(iv).

(v) *Requirements applicable to retroactive annuity starting dates.* A distribution is permitted to have a retroactive annuity starting date with respect to a participant's benefit only if the following requirements are met:

(A) The participant's spouse (including an alternate payee who is treated as the spouse under a qualified domestic relations order (QDRO), as defined in section 414(p)), determined as if the date distributions commence were the participant's annuity starting date, consents to the distribution in a manner that would satisfy the requirements of section 417(a)(2). The spousal consent requirement of this paragraph (b)(3)(v)(A) is satisfied if such spouse consents to the distribution under paragraph (b)(2)(i) of this section. The spousal consent requirement of this paragraph (b)(3)(v)(A) does not apply if the amount of such spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would satisfy the requirements to be a QJSA under section 417(b) and that has an annuity starting date after the date that the explanation was provided.

(B) The distribution (including appropriate interest adjustments) provided based on the retroactive annuity starting date would satisfy the requirements of section 415 if the date the distribution commences is substituted for the annuity starting date for all purposes, including for purposes of determining the applicable interest rate and the applicable mortality table. However, in the case of a form of benefit that would have been excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply section 415 as of the date distribution commences set forth in this paragraph (b)(3)(v)(B) does not apply if the date distribution commences is twelve months or less from the retroactive annuity starting date.

(C) In the case of a form of benefit that would have been subject to section 417(e)(3) and paragraph (d) of this section if distributions had commenced as of the retroactive annuity starting date, the distribution is no less than the benefit produced by applying the applicable interest rate and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. Thus, for example, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the straight life annuity payable at normal retirement age, then the amount of the distribution must be no less than the present value of the annuity payable at normal retirement age, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date. Likewise, if a distribution paid pursuant to an election

of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the early retirement annuity payable as of the retroactive annuity starting date, then the amount of the distribution must be no less than the present value of the early retirement annuity payable as of the distribution date, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date.

(vi) *Timing of notice and consent requirements in the case of retroactive annuity starting dates*. In the case of a retroactive annuity starting date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in paragraphs (b)(3)(i) and (ii) of this section, except that the substitution does not apply for purposes of paragraph (b)(3)(iii) of this section. Thus, the written explanation required by section 417(a)(3)(A) must generally be provided no less than 30 days and no more than 90 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of paragraph (b)(3)(ii) of this section would be satisfied if the date of the first payment is substituted for the annuity starting date.

(vii) *Administrative delay*. A plan will not fail to satisfy the 90-day timing requirements of paragraphs (b)(3)(iii) and (vi) of this section merely because, due solely to administrative delay, a distribution commences more than 90 days after the written explanation of the QJSA is provided to the participant.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.417(e)–1	1545–1724
* * *	* *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–17869 Filed 7–15–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–242–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; withdrawal of required amendment.

SUMMARY: We are withdrawing a required amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment concerns the determination of the premining use of land that was not previously mined. In doing so, we find that the Kentucky program is no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kentucky Field Office Director William J. Kovacic. Telephone: (859) 260–8402; Internet address: *wkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Required Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982.

You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21426). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Required Amendment

On October 1, 1992, we published, in the **Federal Register** (57 FR 45295), a requirement that Kentucky amend their program to provide that in determining premining uses of land not previously mined, the land must have been properly managed. We codified the required amendment in the Federal regulations at 30 CFR 917.16(g). Subsequent review of Kentucky's program led to our determination that this requirement may not be necessary to assure that Kentucky's program is as effective as the Federal regulations. We announced our intent to reconsider this required amendment in the April 29, 2003, **Federal Register** (68 FR 22646). In the same document, we invited public comment on the proposed removal of the required amendment. The public comment period closed on May 29, 2003. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the proposed removal of the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

The Kentucky regulations at 405 Kentucky Administrative Regulations (KAR) 16:210 and 405 KAR 18:220 Section 1 (1)(a) and (b) currently provide:

Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.