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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10005]

RIN 1545-BQ67

Plan-Specific Substitute Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that update the requirements that a plan sponsor of a single-employer defined benefit plan must meet to obtain IRS approval to use mortality tables specific to the plan in calculating present value for minimum funding purposes (as a substitute for the generally applicable mortality tables). These regulations affect participants in, and beneficiaries of, certain retirement plans and employers maintaining those plans.

DATES:

Effective date: These regulations are effective July 31, 2024.

Applicability date: These regulations apply for plan years beginning on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Arslan Malik or Linda S.F. Marshall, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are single-employer plans (that is, not

multiemployer plans).¹ For a plan subject to section 430, section 430(a) defines the minimum required contribution for a plan year by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Section 430(h)(3)(C) prescribes rules for a plan sponsor's use of substitute mortality tables reflecting the specific mortality experience of a plan's population instead of using the generally applicable mortality tables. Under section 430(h)(3)(C), the plan sponsor may request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in section 430(h)(3)(C)(iii). If the Secretary determines that the proposed tables meet the statutory standards and approves the request, the substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request.

Under section 430(h)(3)(C)(iii), a substitute mortality table may be used for a plan only if: (1) the plan has a sufficient number of plan participants and has been maintained for a sufficient period of time to have credible mortality information necessary to create a substitute mortality table; and (2) the table reflects the actual mortality experience of the plan's participants and projected trends in general

¹ Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829 (1974), as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

mortality experience. Except as provided by the Secretary, a plan sponsor may not use substitute mortality tables for any plan unless substitute mortality tables are established and used for each plan maintained by the plan sponsor or a member of its controlled group.

Final regulations (TD 9826) under section 430(h)(3) were published in the **Federal Register** on October 5, 2017 (82 FR 46388). The final regulations issued in 2017 include rules regarding generally applicable mortality tables under section 430(h)(3)(A), which are set forth in § 1.430(h)(3)-1, as well as rules regarding substitute mortality tables under section 430(h)(3)(C), which are set forth in § 1.430(h)(3)-2. Section 1.430(h)(3)-2(d)(2) provides that substitute mortality tables must be based on the plan's mortality experience during an experience study period that consists of 2, 3, 4, or 5 consecutive 12-month periods. In conjunction with the 2017 issuance of § 1.430(h)(3)-2, the Department of the Treasury (Treasury Department) and the IRS issued Rev. Proc. 2017-55, 2017-43 IRB 373, which sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval for the use of plan-specific substitute mortality tables.

Beginning in 2020 and extending into the first part of 2023, for many defined benefit pension plans, the mortality experience of the plan participants was significantly higher than expected due to the COVID-19 pandemic. The Treasury Department and the IRS are concerned that, if a plan sponsor applied for approval of plan-specific substitute mortality tables using an experience study period that reflects the actual mortality experience for the plan's population during those years, then unless there is a change in the rules that are used for generating those tables, the resulting plan-specific substitute mortality tables would overstate the expected future mortality for the plan's population. This is because § 1.430(h)(3)-2(d)(4)(i) provides that substitute mortality tables are constructed using a mortality ratio calculated for the plan's population, which is determined by dividing the amounts-weighted number of actual deaths for plan participants during the experience study period by the amounts-weighted number of expected

deaths for those participants under the generally applicable mortality tables. In the absence of any changes to the rules and procedures for generating plan-specific substitute mortality tables, a mortality ratio developed using an experience study period that includes the period in which the COVID-19 pandemic occurred (COVID-19 pandemic period) will likely be unusually high, as the numerator of the mortality ratio will reflect the actual number of deaths for the plan population during this period, while the denominator of that ratio will be based on the expected number of deaths from the generally applicable mortality tables (which reflect only a small fraction of the significant short-term increase in mortality rates that occurred during the COVID-19 pandemic period). The Treasury Department and the IRS are concerned that if a substitute mortality table constructed using that mortality ratio is used for a plan's actuarial valuation, then the plan's liabilities will be understated.

To address this concern, proposed regulations that provide rules regarding the use of mortality experience data for the COVID-19 pandemic period in the construction of substitute mortality tables were published in the **Federal Register** on October 20, 2023 (88 FR 72409) (the proposed regulations). On the same date that the proposed regulations were issued, the Treasury Department and the IRS issued final regulations amending § 1.430(h)(3)-1 to update the generally applicable mortality tables under section 430(h)(3)(A) (88 FR 72357) (2023 final mortality regulations).

Under § 1.430(h)(3)-2(c)(6)(ii)(E), approval to use a previously approved substitute mortality table terminates in conjunction with the replacement of the generally applicable mortality tables under section 430(h)(3)(A) and § 1.430(h)(3)-1 as of the date specified in guidance published in the Internal Revenue Bulletin. The preamble to the 2023 final mortality regulations indicated that the Treasury Department and the IRS will not require that the use of any previously approved plan-specific substitute mortality tables be terminated in conjunction with the replacement of the generally applicable mortality tables until amendments to the substitute mortality regulations are finalized and an updated revenue procedure that reflects those final regulations is issued.

Four comments on the proposed regulations were received. No commenters requested to speak at a public hearing. The Treasury Department and IRS considered the

comments that were received and are finalizing the proposed regulations with certain revisions, as explained in the following summary of comments and explanation of revisions. In addition, the Treasury Department and IRS are issuing Rev. Proc. 2024-32, 2024-34 IRB ____, which updates the procedures set forth in Rev. Proc. 2017-55 to reflect the amendments to § 1.430(h)(3)-2 made by this Treasury decision.

Summary of Comments and Explanation of Revisions

These regulations provide rules regarding the use of mortality experience data for the COVID-19 pandemic period that supplement the methodology for developing substitute mortality tables provided in § 1.430(h)(3)-2. These rules have the same structure as the rules that were included in the proposed regulations (under which the expected probability of death must be adjusted to reflect the generally higher mortality that occurred during the COVID-19 pandemic period) but eliminate the adjustment for 2023 and provide for a different adjustment for 2022.

To develop a mortality ratio that is more accurately predictive of future mortality experience for a plan population, these regulations provide that the expected deaths for the plan population used in determining the denominator in the mortality ratio are calculated by adjusting the mortality rates in the generally applicable mortality tables. Specifically, the regulations provide that, for each 12-month period that is included in the experience study period and that begins after 2019 and before 2023, the expected mortality rate for an individual is determined by multiplying the expected mortality rate for that individual from the standard mortality tables by an adjustment factor.

The proposed regulations provided for an adjustment factor for each 12-month period that is included in the experience study period and that began after 2019 and before 2024. The proposed adjustment factor for each of those years approximated the ratio (as reported by the National Center for Health Statistics, which is part of the Centers for Disease Control and Prevention) of (1) the actual number of deaths for the general population for the year to (2) the expected number of deaths for the general population for that year.² Under the proposed regulations, the adjustment factor for a

12-month period beginning in 2020 or 2021 was 1.15, for a 12-month period beginning in 2022 was 1.10, and for a 12-month period beginning in 2023 was 1.05.

The Treasury Department and IRS received four comments regarding the adjustment factors set forth in the proposed regulations. The four commenters stated that a single adjustment factor for each year inadequately captured the age, gender, and regional variances in excess mortality during the COVID-19 pandemic. In addition, three commenters suggested that the adjustment factor for 2023 be eliminated (because preliminary data from 2023 showed a decline in excess mortality such that no adjustment may be needed for 2023), and that the adjustment factor for 2022 be reduced. After considering these comments and the most recent mortality data available, the Treasury Department and IRS are eliminating the adjustment for 2023 and reducing the adjustment for 2022. However, the Treasury Department and IRS concluded that providing adjustment factors based on age would be inconsistent with the overall model for developing substitute mortality tables, and that providing separate adjustment factors based on gender or geography would add a degree of complexity that would outweigh any potential increase in precision that these adjustment factors may provide.

The four commenters also suggested that, as an alternative to applying the adjustment factors, plan sponsors be permitted to construct substitute mortality tables without taking into account any mortality experience from the COVID-19 pandemic period. The Treasury Department and IRS have considered this approach but rejected it because providing for such an approach would mean that the mortality experience used to construct the substitute mortality table could be so out of date that it would be less reliable in predicting future mortality for the plan population. For example, if a plan sponsor was applying for approval of a substitute mortality table in 2024 using calendar year mortality experience without taking into account mortality experience for 2020, 2021, and 2022, the most recent mortality experience would be from 2019, which is more than 4 years prior to the application for approval.

Under a transition rule in the proposed regulations, substitute mortality tables that were previously approved for use for a plan year beginning in 2025 would be treated as satisfying the rules for developing

² See Excess Deaths Associated with Covid-19 at https://www.cdc.gov/nchs/nvss/vsr/covid19/excess_deaths.htm.

substitute mortality tables that apply for that plan year. This transition rule, which is included in these regulations, addresses plans with previously approved substitute mortality tables that were based on a mortality experience study that included data from the COVID-19 pandemic period (and therefore do not satisfy the requirements specified in these regulations).

One commenter requested clarification as to the extent to which other previously approved substitute mortality tables may continue to be used for the remainder of their approval period even if that approval period extends beyond 2025. The Treasury Department and IRS considered this comment and decided to continue to allow the use of previously approved substitute mortality tables that were developed based on an experience study that did not include data from the COVID-19 pandemic period for the original duration of the approval, provided that there has not been a significant change in plan coverage, as described in the first sentence of § 1.430(h)(3)-2(c)(6)(iii)(A).³ Thus, if the experience study for a substitute mortality table that has been approved for use for a plan year beginning in 2025 includes mortality data from 2020, 2021, or 2022 (or the number of individuals covered by the substitute mortality table is less than 80 percent or more than 120 percent of the average number of individuals in that population over the years covered by the experience study), then the substitute mortality table may be used for a plan year beginning in 2025 (but may not be used for later years).

These regulations also include a transition rule that applies to requests for approval to use substitute mortality tables for a plan year beginning in 2025. Under that rule, a request for approval to use substitute mortality tables for that plan year will be considered timely if it is submitted on or before October 31, 2024, provided that the plan sponsor agrees to a 90-day extension under § 1.430(h)(3)-2(b)(2)(iv) of the 180-day review period under § 1.430(h)(3)-2(b)(2)(iii).

Applicability Date

These regulations apply for plan years beginning on or after January 1, 2025.

³ The termination of the use of previously approved substitute mortality tables is described in section 12 of Rev. Proc. 2024-32. Under that revenue procedure, if there has been a significant change in plan coverage, a previously approved substitute mortality table cannot be used for a plan year that begins on or after January 1, 2026, even if the plan actuary certifies that the table continues to be accurately predictive of future mortality of the plan population.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Small employers generally cannot use plan-specific substitute mortality tables because their defined benefit pension plans do not have credible mortality experience (which is defined as a minimum number of deaths during the experience study period) as is required to use substitute mortality tables. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These regulations do not include any rule that include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not include rules that have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from Treasury and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 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 1.430(h)(3)-2 is amended by:

■ a. In paragraph (a), removing the language “§ 601.601(d)(2)(ii)(b)” and adding the language “§ 601.601(d)(2)” in its place;

■ b. In paragraph (d)(2)(ii)(B), removing the language “January 1, 2019 year is” and adding the language “January 1, 2019 is” in its place;

■ c. Revising paragraphs (d)(4)(iii) and (g).

The revisions read as follows:

§ 1.430(h)(3)-2 Plan-specific substitute mortality tables used to determine present value.

* * * * *
(d) * * *

(4) * * *

(iii) *Standard mortality table*—(A) *Projection of base table*. Except as otherwise provided in this paragraph (d)(4)(iii), the standard mortality table for a year is the mortality table determined by applying cumulative mortality improvement factors determined under § 1.430(h)(3)–1(b)(2)(ii) to the base mortality table under § 1.430(h)(3)–1(d) for the period beginning with the base year for that mortality table and ending in the base year for the base substitute mortality table determined under paragraph (c)(3)(ii) of this section. For purposes of the preceding sentence, the cumulative mortality improvement factors are determined using the mortality improvement rates described in § 1.430(h)(3)–1(b)(1)(iii) that apply for the calendar year during which the plan sponsor submits the request for approval to use substitute mortality tables.

(B) *Adjustments to standard mortality table for 2020, 2021, and 2022*. If a 12-month period in the experience study period begins after December 31, 2019, and before January 1, 2023, the probability of death for an individual under paragraph (d)(4)(ii)(A)(2)(i) of this section is determined as the mortality rate for the individual’s age (at the beginning of the year) and gender from the standard mortality table determined under paragraph (d)(4)(iii)(A) of this section multiplied by the adjustment factor in Table 1 for the calendar year that includes the first day of the 12-month period. For example, for an experience study period that begins April 1, 2019, and ends March 31, 2023, the probability of death for the year beginning April 1, 2022, for a male annuitant who is age 65 as of that date is the probability of death from the base mortality table (0.01087), multiplied by the cumulative mortality improvement factor for the period from 2012 to 2021 (1.02292) and by the adjustment factor for the 2022 calendar year of 1.075, resulting in a probability of death of 0.01195.

TABLE 1 TO PARAGRAPH (d)(4)(iii)(B)

Calendar year	Adjustment factor
2020	1.15
2021	1.15
2022	1.075

(C) *Selection of base table*. If the population consists solely of annuitants, the annuitant base mortality table set forth in § 1.430(h)(3)–1(d) must be used for purposes of paragraph (d)(4)(iii)(A)

of this section. If the population consists solely of nonannuitants, the nonannuitant base mortality table set forth in § 1.430(h)(3)–1(d) must be used for that purpose. If the population includes both annuitants and nonannuitants, a combination of the annuitant and nonannuitant base tables set forth in § 1.430(h)(3)–1(d) must be used for that purpose. The combined table is constructed using the weighting factors for small plans that are set forth in § 1.430(h)(3)–1(d). The weighting factors are applied to develop the combined table using the following equation:

$$\text{Combined mortality rate} = [\text{nonannuitant rate} * (1 - \text{weighting factor})] + [\text{annuitant rate} * \text{weighting factor}].$$

* * * * *

(g) *Applicability date*—(1) *General rule*. This section applies for plan years beginning on or after January 1, 2025. Except as provided in paragraph (g)(2) or (3) of this section, the substitute mortality table used for a plan for such a plan year must comply with the rules of paragraphs (a) through (f) of this section.

(2) *Transition rule for previously approved substitute mortality tables*. If a plan sponsor has received approval from the Commissioner to use substitute mortality tables for a plan year beginning in 2025, then the plan’s base substitute mortality tables that were approved are treated as satisfying the requirements of paragraph (d) or (e) of this section, as applicable, for that plan year.

(3) *Transition rule for requests for approval to use substitute mortality tables*. A written request described in paragraph (b)(1)(i) of this section to use substitute mortality tables for a plan year that begins during 2025 does not fail to satisfy the timing requirement of paragraph (b)(1)(ii) of this section if it is submitted no later than October 31, 2024, provided that the plan sponsor agrees to a 90-day extension of the 180-day review period in accordance with paragraph (b)(2)(iv) of this section.

Douglas W. O’Donnell,

Deputy Commissioner.

Approved: July 8, 2024

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–16520 Filed 7–30–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0023]

RIN 1625–AA11

Safety Zone; Sea Otter Point, Port of Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulation titled Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK. The City of Valdez has changed the annual firework displays from July 4th to December 31st each year. It is therefore necessary to amend the CFR to reflect the correct date of the fireworks display.

DATES: rule is effective August 30, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0023 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Abigail Ferrara, Marine Safety Unit Valdez, US Coast Guard. Telephone 907–835–7209, email Abigail.C.Ferrara@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
 COTP Captain of the Port Prince William Sound
 DHS Department of Homeland Security
 FR Federal Register
 NPRM Notice of proposed rulemaking
 § Section
 U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard began issuing temporary final rules establishing safety zones during the Valdez July 4th fireworks display beginning in 2014. The Coast Guard received no comments or concerns from the public when the temporary safety zones were in place. Due to the repeating nature of the event, on February 28, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK (82 FR 12076). There we stated why we issued the NPRM and invited comments on our