III. Current Port Limits of Columbus, Ohio

The current port limits of Columbus, Ohio, are contained in two separate Treasury Decisions: 82–9 and 96–67.

Treasury Decision (T.D.) 82–9, published in the **Federal Register** (47 FR 1286) on January 12, 1982, specified the limits as follows:

The geographical boundaries of the Columbus, Ohio, Customs port of entry include all of the territory within the corporate limits of Columbus, Ohio; all of the territory completely surrounded by the city of Columbus; and, all of the territory enclosed by Interstate Highway 270 (outer belt), which completely surrounds the city.

T.D. 96–67, published in the **Federal Register** (61 FR 49058) on September 18, 1996, expanded the port limits of Columbus, Ohio, to encompass the port limits set forth in T.D. 82–9 as well as the following territory:

Beginning at the intersection of Rohr and Lockbourne Roads, then proceeding southerly along Lockbourne Road to Commerce Street, thence easterly along Commerce Street to its intersection with the N & W railroad tracks, then southerly along the N & W railroad tracks to the Franklin-Pickaway County line, thence easterly along the Franklin-Pickaway County line to its intersection with Pontius Road, then northerly along Pontius Road to its intersection with Rohr Road, thence westerly along Rohr Road to its intersection with Lockbourne Road, the point of beginning, all within the County of Franklin, State of Ohio.

IV. Proposed Port Limits of Columbus, Ohio

The new port limits of Columbus, Ohio, are proposed as follows:

The geographic boundaries of the Columbus, Ohio, port of entry include all of Franklin County, and that part of Pickaway County east of U.S. Route 23 and north of State Route 752, all in the State of Ohio.

V. Proposed Amendment to the Regulations

If the proposed port limits are adopted, CBP will amend the list of CBP ports of entry at 19 CFR 101.3(b)(1), to reflect the new description of the limits of the Columbus, Ohio, port of entry.

V. Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624, and the Homeland Security Act of 2002, Public Law 107–296 (November 25, 2002).

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

VII. Statutory and Regulatory Reviews.

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not considered to be an economically significant regulatory action under Executive Order 12866 because it will not result in the expenditure of over $100 million in any one year. The proposed change is intended to expand the geographical boundaries of the Port of Columbus, Ohio, and make it more easily identifiable to the public. There are no new costs to the public associated with this rule. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule does not directly regulate small entities. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public. To the extent that all entities are able to more efficiently or conveniently access the facilities and resources within the proposed expanded geographical area of the new port limits, this proposed rule, if finalized, should confer benefits to CBP, carriers, importers, and the general public.

Because this rule does not directly regulate small entities, we do not believe that this rule has a significant economic impact on a substantial number of small entities. However, we welcome comments on that assumption. The most helpful comments are those that can give us specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

Dated: May 12, 2009.

Janet Napolitano,

Secretary.

[FR Doc. E9–11551 Filed 5–15–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115699–09]

RIN:1545–BI64

Suspension or Reduction of Safe Harbor Nonelective Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations relating to certain cash or deferred arrangements and matching contributions under section 401(k) plans and section 403(b) plans. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of certain section 401(k) plans and section 403(b) plans.

DATES: Written or electronic comments must be received by August 17, 2009. Outlines of the topics to be discussed at the public hearing scheduled for Wednesday, September 23, 2009, at 10 a.m. must be received by August 19, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–115699–09), 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–115699–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–115699–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad, Dana Barry or William D. Gibbs at (202) 622–6060; concerning the submission of comments or to request a public hearing, *Richard.A.Hurst@irscounsel.treas.gov,* (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by July 17, 2009. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in § 1.401(k)–3. The collection relates to the new supplemental notice in the case of a reduction or suspension of safe harbor nonelective contributions. The likely recordkeepers are businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments.

Estimated total average annual recordkeeping burden: 5,000 hours.

Estimated average annual burden hours per recordkeeper: 1 hour.

Estimated number of recordkeepers: 5,000.

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

This document contains proposed amendments to regulations under sections 401(k) and 401(m) of the Internal Revenue Code.

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)–1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of requirements. For example, contributions under the CODA must satisfy either the nondiscrimination test set forth in section 401(k)(3), called the actual deferral percentage (ADP) test, or one of the design-based alternatives in section 401(k)(11), 401(k)(12), or 401(k)(13). Under the ADP test, the average percentage of compensation deferred for eligible highly compensated employees (HCEs) is compared to the average percentage of compensation deferred for eligible nonhighly compensated employees (NHCEs), and if certain deferral percentage limits are exceeded with respect to HCEs, corrective action must be taken.

Section 401(k)(12) provides a design-based safe harbor method under which a CODA is treated as satisfying the ADP test if the arrangement meets certain contribution and notice requirements. A plan satisfies this safe harbor method if the employer makes specified qualified matching contributions (QMACs) for all eligible NHCEs. The employer can make QMACs under a basic matching formula that provides for QMACs on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 3% of compensation and 50% of the employee's elective contributions that exceed 3% but do not exceed 5% of compensation. Alternatively, the employer can make QMACs under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of QMACs that is at least as generous as under the basic matching formula, but only if the rate of QMACs under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In lieu of QMACs, the plan is permitted to provide qualified nonelective contributions (QNECs) equal to 3% of compensation for all eligible NHCEs. In addition, notice must be provided to each eligible employee, within a reasonable period before the beginning of the plan year, of the employee's rights and obligations under the plan.

Section 401(k)(13), as added by section 902 of the Pension Protection Act of 2006, Public Law 109–280 (PPA '06), provides an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level and meets certain employer contribution and notice requirements. Similar to the design-based safe harbor under section 401(k)(12), section 401(k)(13) provides a choice for an employer between satisfying a matching contribution requirement or a nonelective contribution requirement. Under the matching contribution requirement, the employer can make matching contributions under a basic matching formula that provides for matching contributions on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 1% of compensation and 50% of the employee's elective contributions that exceed 1% but do not exceed 6% of compensation. Alternatively, the employer can make matching contributions under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of matching contributions that is at least as generous as under the basic matching formula at such rate, but only if the rate of matching contributions under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In addition, the plan must satisfy a notice requirement under section 401(k)(13) that is similar to the notice requirement under section 401(k)(12).

Except as discussed elsewhere in this preamble, a plan that uses one of these safe harbor methods under section 401(k)(12) or (13) must specify, before the beginning of the plan year, whether the safe harbor contribution will be the safe harbor nonelective contribution or the safe harbor matching contribution and is not permitted to provide that ADP testing will be used if the requirements for the safe harbor are not satisfied.

Section 401(m) sets forth a nondiscrimination requirement that applies to a plan providing for matching contributions or employee contributions. Such a plan must satisfy either the nondiscrimination test set forth in section 401(m)(2), called the actual contribution percentage (ACP) test, or one of the design-based alternatives in section 401(m)(10), 401(m)(11), or 401(m)(12). The ACP test in section 401(m)(2) is comparable to the ADP test in section 401(k)(3).

Under section 401(m)(11), a defined contribution plan is treated as satisfying the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(12) and certain other requirements are satisfied. Similarly, under section 401(m)(12), as added by section 902 of PPA '06, a defined contribution plan that provides for automatic contributions at a specified level is treated as meeting the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(13) and certain other requirements are satisfied.

Section 403(b) provides favorable tax treatment for the purchase of annuity contracts that satisfy certain requirements. Pursuant to sections 403(b)(1)(D) and 403(b)(12)(A)(i), the purchase of an annuity contract (other than a purchase by a church) is eligible for this favorable tax treatment only if it is part of a plan that meets the requirements of section 401(m), as if it were a qualified plan under section 401(a).

Final regulations under sections 401(k) and 401(m) were published on December 29, 2004. Sections 1.401(k)–3 and 1.401(m)–3 set forth the requirements for a safe harbor plan under sections 401(k)(12) and 401(m)(11), respectively. On February 24, 2009, these regulations were amended to reflect sections 401(k)(13) and 401(m)(12) (74 FR 8200).

Sections 1.401(k)–3(e)(1) and 1.401(m)–3(f)(1) provide that subject to certain exceptions, a safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year. Accordingly, if, at the beginning of the plan year, a plan contains an allocation formula that includes safe harbor matching or safe harbor nonelective contributions, then the plan may not be amended to revert to ADP or ACP testing for the plan year (except to the extent permitted under §§ 1.401(k)–3 and 1.401(m)–3).

Sections 1.401(k)–3(f) and 1.401(m)–3(g) permit a plan that provides for the use of the current year ADP or ACP testing method to be amended after the first day of the plan year to adopt the safe harbor method under § 1.401(k)–3 or § 1.401(m)–3 using safe harbor nonelective contributions, effective as of the first day of the plan year, if certain requirements are satisfied. In particular, the amendment must be adopted no later than 30 days before the last day of the plan year, and the plan must satisfy specified contingent and follow-up notice requirements. Under §§ 1.401(k)–3(f) and 1.401(m)–3(g), a plan satisfies the contingent notice requirement if the notice is provided before the plan year and specifies that the plan may be amended during the plan year to include the safe harbor nonelective contribution and that, if the plan is amended, a follow-up notice will be provided. A plan satisfies the follow-up notice requirement if, no later than 30 days before the last day of the plan year, each eligible employee is given a notice that states that the safe harbor nonelective contributions will be made for the plan year.

A plan that provides for safe harbor matching contributions will not fail to satisfy section 401(k)(3) or section 401(m)(2) for a plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions, as long as the requirements under § 1.401(k)–3(g) or § 1.401(m)–3(h) are met. Under these regulations: a notice must be provided to all eligible employees regarding the reduction or suspension of safe harbor matching contributions; the reduction or suspension of safe harbor matching contributions must be effective no earlier than the later of 30 days after eligible employees are provided the notice and the date the amendment is adopted; eligible employees must be given a reasonable opportunity prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections; the plan must be amended to provide that the applicable nondiscrimination tests will be satisfied for the entire plan year; and the plan must satisfy the requirements of §§ 1.401(k)–3 and 1.401(m)–3 (other than §§ 1.401(k)–3(g) and 1.401(m)–3(h)) with respect to amounts deferred through the effective date of the amendment.

Sections 1.401(k)–3(e)(4) and 1.401(m)–3(f)(4) provide that, if a plan terminates during a plan year, the plan will not fail to satisfy the requirements of §§ 1.401(k)–3(e)(1) and 1.401(m)–3(f)(1) merely because the final plan year is less than 12 months, provided that the plan satisfies the requirements of §§ 1.401(k)–3 and 1.401(m)–3 through the date of termination and either (1) the plan would have satisfied the requirements applicable to a plan amendment to reduce or suspend safe harbor matching contributions (other than the requirement that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections) or (2) the termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(d) [1]).

Section 416 sets forth the rules for top-heavy plans. Section 416(g)(4)(H) provides that a top-heavy plan will not include a plan which consists solely of a cash or deferred arrangement that meets the requirements of section 401(k)(12) or 401(k)(13) and matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

Explanation of Provisions

The proposed regulations would amend §§ 1.401(k)–3 and 1.401(m)–3 to permit an employer sponsoring a safe harbor plan described in section 401(k)(12) or 401(k)(13) that incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c)) to reduce or suspend safe harbor nonelective contributions during a plan year. These proposed regulations would provide an employer an alternative to the option of terminating the employer's safe harbor plan in such a situation.

The proposed regulations would allow for the reduction or suspension of safe harbor nonelective contributions under rules generally comparable to the provisions relating to the reduction or suspension of safe harbor matching contributions. Under these rules, a plan that reduces or suspends safe harbor nonelective contributions will not fail to satisfy section 401(k)(3), provided that: (1) All eligible employees are provided a supplemental notice of the reduction or suspension; (2) the reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice and the date the amendment is adopted; (3) eligible employees are given a reasonable opportunity (including a reasonable

[1] The definition of substantial business hardship in section 412(d) was relocated to become part of section 412(c) by section 111 of the Pension Protection Act of 2006, Public Law 109–280.

period after receipt of the supplemental notice) prior to the reduction or suspension of the safe harbor nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections; (4) the plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs, using the current year testing method; and (5) the plan satisfies the safe harbor nonelective contribution requirement with respect to safe harbor compensation paid through the effective date of the amendment. The proposed regulations would also provide that the supplemental notice requirement is satisfied if each eligible employee is given a notice that explains: (1) The consequences of the amendment reducing or suspending future safe harbor nonelective contributions; (2) the procedures for changing cash or deferred elections and, if applicable, employee contribution elections; and (3) the effective date of the amendment.

The proposed regulations would further provide that these same rules that apply to safe harbor plans under § 1.401(k)–3 also apply to safe harbor plans under § 1.401(m)–3, except that the plan must be amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method.

Because the reduction or suspension of safe harbor contributions can be effective no earlier than the later of 30 days after the notice is provided to all eligible employees and the date the amendment is adopted, an employer that wants to reduce or suspend safe harbor contributions during a year could not implement this change by adopting the amendment at the end of the plan year. In addition, a plan that is amended during the plan year to reduce or suspend safe harbor contributions (whether nonelective contributions or matching contributions) must prorate the otherwise applicable compensation limit under section 401(a)(17) in accordance with the requirements of § 1.401(a)(17)–1(b)(3)(iii)(A). Furthermore, a plan that is amended to reduce or suspend safe harbor contributions is no longer a plan described in section 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12) for the entire plan year. Accordingly, such a plan is not described in section 416(g)(4)(H) and, thus, will be subject to the top-heavy rules under section 416.

Proposed Effective Date

These regulations are proposed to be effective for amendments adopted after May 18, 2009. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the guidance in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

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 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulations impact on small businesses is as follows. A pension consultant or attorney must read the regulation. He must then communicate this information to the small business owner. The small business owner must then decide if he wants to reduce nonelective contributions to its safe harbor plan. Once this decision is made, the pension consultant or attorney must draft the notice to employees and the small business must make sure that the employees receive the notice.

We estimate that the cost to do these tasks is $500–$1000. If the small business owner can implement this program by July 1, 2009, he will save 1.5% of his payroll for 2009. A small business with an annual payroll of $1,000,000 can save $15,000 in 2009. Thus, adopting the provisions in these regulation will in almost all cases save the small business owner money. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

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

The current regulations, in describing the requirement for safe harbor plans that a notice be provided before the beginning of the plan year, do not address the possibility that safe harbor contributions may be reduced or suspended during the year. Since, under these regulations, safe harbor nonelective contributions, as well as safe harbor matching contributions, can be reduced or suspended during the plan year under certain circumstances, the IRS and Treasury are considering adding to the minimum content listing in § 1.401(k)–3(d)(2)(ii), a requirement that the possibility of reduced or suspended safe harbor contributions be described in the notice required to be provided before the beginning of the plan year (except in the case of a contingent notice described in § 1.401(k)–3(f)). If adopted, the requirement that the notice describe the possibility of reduced or suspended safe harbor contributions would not apply for plan years beginning before January 1, 2010. The IRS and Treasury specifically request comments on whether the additional content requirement should be added to the regulations.

A public hearing has been scheduled for September 23, 2009, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 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.

Persons who wish to present oral comments at the hearing must submit written or electronic comments and submit 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 August 19, 2009. 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 authors of these regulations are Dana Barry, William Gibbs, and Lisa Mojiri-Azad, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended to read as follows:

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

Section 1.401(k)–3 is also issued under 26 U.S.C. 401(m)(9).

Par. 2. Section 1.401(k)–0 is amended by revising the entries for § 1.401(k)–3(g), (g)(1) and (g)(2) to read as follows:

§ 1.401(k)–0 Table of Contents.

* * * * *

§ 1.401(k)–3 Safe harbor requirements.

* * * * *

(g) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 3. Section 1.401(k)–3 is amended by:

1. Revising paragraph (e)(4)(ii).

2. Revising paragraph (g).

The revisions read as follows:

§ 1.401(k)–3 Safe harbor requirements.

* * * * *

(e) * * *

(4) * * *

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship comparable to a substantial business hardship described in section 412(c).

* * * * *

(g) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions.* A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions (and, if applicable, employee contributions) provided that—

(A) All eligible employees are provided the supplemental notice in accordance with paragraph (g)(2) of this section;

(B) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section and the date the amendment is adopted;

(C) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(D) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(k)–2(a)(2)(ii); and

(E) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions.* A plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section for the plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c));

(B) The amendment is adopted after May 18, 2009;

(C) All eligible employees are provided the supplemental notice in accordance with paragraph (g)(2) of this section;

(D) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section and the date the amendment is adopted;

(E) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(F) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(k)–2(a)(2)(ii); and

(G) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice.* The supplemental notice requirement of this paragraph (g)(2) is satisfied if each eligible employee is given a notice (in writing or such other form as prescribed by the Commissioner) that explains—

(i) The consequences of the amendment which reduces or suspends future safe harbor contributions;

(ii) The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and

(iii) The effective date of the amendment.

Par. 4. Section 1.401(m)–0 is amended by revising the entries for § 1.401(m)–3(h), (h)(1) and (h)(2) in their entirety to read as follows:

§ 1.401(m)–0 Table of Contents.

* * * * *

§ 1.401(m)–3 Safe Harbor Requirements.

* * * * *

(h) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 5. Section 1.401(m)–3 is amended by:

1. Revising paragraph (f)(4)(ii).

2. Revising paragraph (h).

The revisions read as follows:

§ 1.401(m)–3 Safe harbor requirements.

* * * * *

(f) * * *

(4) * * *

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship, comparable to a substantial business hardship described in section 412(c).

* * * * *

(h) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions.* A plan that provides for safe harbor matching

contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(m)(2) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective deferrals and, if applicable, employee contributions provided that—

(A) All eligible employees are provided the supplemental notice in accordance with paragraph (h)(2) of this section;

(B) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section and the date the amendment is adopted;

(C) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(D) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(m)–2(a)(2)(ii); and

(E) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions.* A plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section will not fail to satisfy the requirements of section 401(m)(2) for the plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c));

(B) The amendment is adopted after May 18, 2009;

(C) All eligible employees are provided the supplemental notice in accordance with paragraph (h)(2) of this section;

(D) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section and the date the amendment is adopted;

(E) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(F) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(m)–2(a)(2)(ii); and

(G) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice.* The supplemental notice requirement of this paragraph (h)(2) is satisfied if each eligible employee is given a notice that satisfies the requirements of § 1.401(k)–3(g)(2).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–11481 Filed 5–15–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1017]

RIN 1625–AA11

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of third public meeting; request for comments.

SUMMARY: In response to requests received, the Coast Guard announces a third public meeting, to be held on June 2, 2009, to receive comments on the notice of proposed rulemaking entitled ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' that was published in the **Federal Register** on February 12, 2009 (74 FR 7022).

As stated in the notice of proposed rulemaking, the Coast Guard proposes to establish Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington that will include procedures for restricting and/or closing those bars as well as additional safety requirements for recreational and small commercial vessels operating in the RNAs. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

DATES: The public meeting for the proposed rule will be held in Coos Bay, Oregon, on Tuesday, June 2, 2009, from 6 p.m. to 9 p.m. in order to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting.

The comment period for the proposed rule will close on June 30, 2009. All comments and related material must be received by the Coast Guard on or before June 30, 2009.

ADDRESSES: The public meeting in Coos Bay, OR will be held at The Red Lion Hotel, 1313 N. Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

You may submit written comments identified by docket number USCG–2008–1017 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

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

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2008–1017.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the proposed rule, please call or e-mail LCDR Emily Saddler, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch; telephone 206–220–7210, e-mail *Emily.C.Saddler@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V.