

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Mitchell, OR [New]

Antone Ranch Airport, OR
(Lat. 44°29'34" N, long. 119°50'38" W)

That airspace extending upward from 700 feet above the surface within 2.2 miles either side of the 098° bearing extending to the airport 8.4-mile radius, and within 2.2 miles either side of the 278° bearing extending to the airport 10.4-mile radius, and within an area bounded by a line beginning at the 290° bearing at 10.4 miles, then clockwise along the airport's 10.4-mile radius to the 317° bearing, to the 327° bearing at 7.1 miles, to the 310° bearing at 4.1 miles, thence to the point of beginning.

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Issued in Des Moines, Washington, on October 13, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103525–23]

RIN 1545–BQ67

Plan-Specific Substitute Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations that would 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 would affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

DATES: Written or electronic comments and requests for a public hearing must be received by December 19, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–103525–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG–103525–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Arslan Malik or Linda S. F. Marshall at (202) 317–6700 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317–6901 (not a toll-free number) or by sending an email to publichearings@irs.gov (preferred).

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

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

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 the statute. 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 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

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 proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code would also apply for purposes of section 303 of ERISA.

in 2017 include rules regarding generally applicable mortality tables, which are set forth in § 1.430(h)(3)–1 (the 2017 general mortality table regulations), as well as rules regarding substitute mortality tables, which are set forth in § 1.430(h)(3)–2 (the 2017 substitute mortality table regulations). The 2017 substitute mortality table regulations provide that any 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 substitute mortality table regulations, 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 2023, for many 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 the existing rules and procedures used for generating those tables would result in plan-specific substitute mortality tables that overstate the expected future mortality for the plan's population. This is because substitute mortality tables are constructed based on a mortality ratio calculated for the plan's population, which is determined by dividing the actual mortality experience for plan participants during the experience study period by the expected mortality 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 (the plan's actual experience) will reflect the actual number of deaths during this period, while the denominator of that ratio (the expected deaths for the plan population) 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 issuing final regulations updating the generally applicable mortality tables under section 430(h)(3)(A) (TD 9983) in the Rules and Regulations section of this issue of the **Federal Register**. Those final regulations adopt mortality tables that are based on the mortality tables in the Pri-2012 Private Retirement Plans Mortality Tables Report (Pri-2012),² which were developed using the mortality experience for private sector pension plans during the period from 2010 to 2014. In light of the fact that the Pri-2012 mortality tables did not reflect any mortality experience from the COVID–19 pandemic period, the preamble to the proposed regulations that preceded those final regulations asked for comments about whether the rules and procedures relating to development of substitute mortality tables should be modified to recognize the potential that the mortality experience for the COVID–19 pandemic period is not accurately predictive of the future mortality experience for participants of a plan for which substitute mortality tables are requested. In response, commenters suggested various solutions that included: (1) excluding mortality data from the COVID–19 pandemic period, (2) applying a reduced weight to the mortality data from the COVID–19 pandemic period in developing the substitute mortality tables, (3) extending the duration of the experience study period (which has a similar effect of reducing the weight of the mortality data for that period), and (4) computing the mortality ratio for a substitute mortality table by comparing pre-2020 data to the Pri-2012 base mortality table and post-2019 data to the Pri-2012 base mortality table (as projected) with a specified load.

Explanation of Provisions

These proposed regulations would generally retain the methodology for development of substitute mortality tables included in the 2017 substitute mortality table regulations but provide additional rules regarding the use of mortality experience data for the COVID–19 pandemic period. In order to develop a mortality ratio that is more accurately predictive of future mortality experience for a plan population, these proposed regulations would 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 proposed regulations would provide that, for each 12-month period that is included in the experience study period and that begins after 2019 and before 2024, 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.³ The adjustment factor for each of these years would approximate the ratio (as reported by the National Center for Health Statistics, which is part of the Centers for Disease Control and Prevention)⁴ 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.

Applicability Date

The proposed regulations are proposed to apply for plan years beginning on or after January 1, 2025.

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

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.

It is hereby certified that this proposed 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

³ This approach is similar to the fourth approach suggested by commenters, as described in the Background section of this preamble because a direct adjustment to the expected mortality rates during the COVID–19 pandemic period would be more appropriate than calculating mortality ratios using an approach that either ignores the mortality experience during the COVID–19 pandemic period or reduces the weighting of that experience.

⁴ https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm.

² The Pri-2012 Report can be found at: <https://www.soa.org/49c106/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf>.

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) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

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. The proposed regulations do not propose any rule that would 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.

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. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the ADDRESSES section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Any comments submitted will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

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.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to 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 “§ 601.601(d)(2)(ii)(b)” and adding in its place “§ 601.601(d)”;

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

■ c. Revising paragraph (d)(4)(iii)(A).

■ d. Redesignating paragraph (d)(4)(iii)(B) as paragraph (d)(4)(iii)(C) and adding a new paragraph (d)(4)(iii)(B).

■ e. Revising paragraph (g).

The additions and revisions read as follows:

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

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(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, 2022, and 2023.* If a 12-month period in the experience study period begins after December 31, 2019, and before January 1, 2024, 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) 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 1.10, resulting in a probability of death of 0.01223.

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

<i>Calendar year</i>	<i>Adjustment factor</i>
2020	1.15
2021	1.15
2022	1.10
2023	1.05

* * * * *

(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) 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.

Douglas W. O’Donnell,
Deputy Commissioner for Services and Enforcement.

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