Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

■ 4. Section 700.27 is amended by revising paragraph (a)(1) and by adding paragraph (e) to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

(a) * * *

(1) Prohibited cattle materials means specified risk materials, small intestine of all cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or mechanically separated (MS) (Beef). Prohibited cattle materials do not include the following:

(i) Tallow that contains no more than 0.15 percent insoluble impurities, tallow derivatives, hides and hide-derived products, and milk and milk products, and

(ii) Cattle materials inspected and passed from a country designated under paragraph (e) of this section.

* * * * *

(e) *Process for designating countries.* A country seeking designation must send a written request to the Director, Office of the Center Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, at the address designated in 21 CFR 5.1100. The request shall include information about a country's bovine spongiform encephalopathy (BSE) case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether specified risk materials, the small intestine of cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, or MS (Beef) from cattle from the country should be considered prohibited cattle materials. FDA shall respond in writing to any such request and may impose conditions in granting any such request. A country designation granted by FDA under this paragraph will be subject to future review by FDA, and may be revoked if FDA determines that it is no longer appropriate.

Dated: April 11, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08–1142 Filed 4–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9393]

RIN 1545–BF97

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G in instances where an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. These final regulations affect employers that contribute to employees' HSAs and their employees.

DATES: *Effective Date:* These regulations are effective on April 17, 2008.

Applicability Date: These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mireille Khoury at (202) 622–6080.

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 1545–2090. The collection of information in these final regulations is in Q & A–14. This information is needed for purposes of making HSA contributions to employees who establish an HSA after the end of the calendar year but before the last day of February or who have not previously notified their employer that they have established an HSA.

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 final Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Internal Revenue Code (Code). Under section 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

On August 26, 2005, proposed regulations (REG–138647–04) on the comparability rules of section 4980G were published in the **Federal Register** (70 FR 50233). On July 31, 2006, final regulations (REG–138647–04) on the comparability rules were published in the **Federal Register** (71 FR 43056). The final regulations clarified and expanded upon the guidance regarding the comparability rules published in Notice 2004–2 (2004–2 IRB 296) and in Notice 2004–50 (2004–33 IRB 196), Q & A–46 through Q & A–54. See § 601.601(d)(2). Q & A–6(b) of the final regulations reserved the issue of employees who have not established an HSA by the end of the calendar year.

On June 1, 2007, proposed regulations (REG–143797–06), were published in the **Federal Register** (72 FR 30501) addressing the reserved issue and one additional issue concerning the acceleration of employer contributions. One written public comment on the proposed regulations was received, which supported the proposed regulations. These final regulations adopt the provisions of the proposed regulations without substantive revision.

Explanation of Provisions and Summary of Comments

Employee Has Not Established HSA by December 31

The proposed and final regulations provide a means for employers to comply with the comparability requirements with respect to employees who have not established an HSA by December 31, as well as with respect to employees who may have established an HSA but not notified the employer of that fact. The proposed and final regulations provide that, in order to comply with the comparability rules for a calendar year with respect to such employees, the employer must comply with a notice requirement and a contribution requirement. In order to comply with the notice requirement, the employer must provide all such employees, by January 15 of the following calendar year, written notice

that each eligible employee who, by the last day of February, both establishes an HSA and notifies the employer that he or she has established the HSA will receive a comparable contribution to the HSA. For each such eligible employee who establishes an HSA and so notifies the employer by the end of February, the employer must contribute to the HSA by April 15 comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest. The notice may be delivered electronically. The proposed and final regulations provide sample language that employers may use as a basis in preparing their own notices. The only comment received was in support of this new rule and the model notice.

Acceleration of Employer Contributions

The proposed and final regulations also address a second issue relating to acceleration of contributions. They provide that, for any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred during the calendar year qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions for this reason, these contributions must be available on an equal and uniform basis to all eligible employees throughout the calendar year and employers must establish reasonable uniform methods and requirements for acceleration of contributions and the determination of medical expenses. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A–6 and Q & A–12 in § 54.4980G–4 for when reasonable interest must be paid. The one comment received supported this new provision allowing employers to accelerate contributions.

Other Issues

These final regulations concern only section 4980G. Other statutes may impose additional requirements (for example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (sections 9801–9803)).

Effective/Applicability Date

These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009. However, employers may rely on this guidance beginning on or after the date of publication of these final regulations in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact the estimated burden associated with the information collection averages 15 minutes per respondent. Moreover, a model notice has been provided for employers who are subject to this collection of information. Therefore, a Regulatory Flexibility 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, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

■ Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1**. The authority citation for part 54 continues to read in part as follows:

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

§ 54.4980G–0 [Amended]

■ **Par. 2.** Section 54.4980G–0 is amended by adding entries for 54.4980G–4 Q & A–14, Q & A–15 and Q & A–16 to read as follows:

§ 54.4980G–0 Table of contents.

* * * * *

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

Q–14: How does an employer comply with the comparability rules if an employee has not established an HSA by December 31st?

Q–15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

Q–16: What is the effective date for the rules in Q & A–14 and Q & A–15 of this section?

■ **Par. 3**. Section 54.4980G–4 is amended by:

■ 1. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b) in Q & A–6.

■ 2. Adding Q & A–14, Q & A–15 and Q & A–16.

The additions read as follows:

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

Q–14: Does an employer fail to satisfy the comparability rules for a calendar year if the employer fails to make contributions with respect to eligible employees because the employee has not established an HSA or because the employer does not know that the employee has established an HSA?

A–14: (a) *In general.* An employer will not fail to satisfy the comparability rules for a calendar year (Year 1) merely because the employer fails to make contributions with respect to an eligible employee because the employee has not established an HSA or because the employer does not know that the employee has established an HSA, if—

(1) The employer provides timely written notice to all such eligible employees that it will make comparable contributions for Year 1 for eligible employees who, by the last day of February of the following calendar year (Year 2), both establish an HSA and notify the employer (in accordance with a procedure specified in the notice) that they have established an HSA; and

(2) For each such eligible employee who establishes an HSA and so notifies the employer on or before the last day of February of Year 2, the employer contributes to the HSA for Year 1 comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest by April 15th of Year 2.

(b) *Notice.* The notice described in paragraph (a) of this Q & A–14 must be provided to each eligible employee who has not established an HSA by December 31 of Year 1 or if the employer does not know if the employee established an HSA. The

employer may provide the notice to other employees as well. However, if an employee has earlier notified the employer that he or she has established an HSA, or if the employer has previously made contributions to that employee's HSA, the employer may not condition making comparable contributions on receipt of any additional notice from that employee. For each calendar year, a notice is deemed to be timely if the employer provides the notice no earlier than 90 days before the first HSA employer contribution for that calendar year and no later than January 15 of the following calendar year.

(c) *Model notice.* Employers may use the following sample language as a basis in preparing their own notices.

Notice to Employees Regarding Employer Contributions to HSAs:

This notice explains how you may be eligible to receive contributions from [employer] if you are covered by a High Deductible Health Plan (HDHP). [Employer] provides contributions to the Health Savings Account (HSA) of each employee who is [insert employer's eligibility requirements for HSA contributions] (''eligible employee''). If you are an eligible employee, you must do the following in order to receive an employer contribution:

(1) Establish an HSA on or before the last day in February of [insert year after the year for which the contribution is being made] and;

(2) Notify [insert name and contact information for appropriate person to be contacted] of your HSA account information on or before the last day in February of [insert year after year for which the contribution is being made]. [Specify the HSA account information that the employee must provide (e.g., account number, name and address of trustee or custodian, etc.) and the method by which the employee must provide this account information (e.g., in writing, by e-mail, on a certain form, etc.)].

If you establish your HSA on or before the last day of February in [insert year after year for which the contribution is being made] and notify [employer] of your HSA account information, you will receive your HSA contributions, plus reasonable interest, for [insert year for which contribution is being made] by April 15 of [insert year after year for which contribution is being made]. If, however, you do not establish your HSA or you do not notify us of your HSA account information by the deadline, then we are not required to make any contributions to your HSA for [insert applicable year]. You may notify us that you have established an HSA by sending an [e-mail or] a written notice to [insert name, title and, if applicable, e-mail address]. If you have any questions about this notice, you can contact [insert name and title] at [insert telephone number or other contact information].

(e) *Electronic delivery.* An employer may furnish the notice required under this section electronically in accordance with § 1.401(a)-21 of this chapter.

(f) *Examples.* The following examples illustrate the rules in this Q & A–14:

Example 1. In a calendar year, Employer Q contributes to the HSAs of current employees who are eligible individuals covered under any HDHP. For the 2009 calendar year, Employer Q contributes $50 per month on the first day of each month, beginning January 1st, to the HSA of each employee who is an eligible employee on that date. For the 2009 calendar year, Employer Q provides written notice satisfying the content requirements of this Q & A–14 on October 16, 2008 to all employees regarding the availability of HSA contributions for eligible employees. For eligible employees who are hired after October 16, 2008, Employer Q provides such a notice no later than January 15, 2010. Employer Q's notice satisfies the notice timing requirements in paragraph (a)(1) of this Q & A–14.

Example 2. Employer R's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employer R automatically contributes a non-elective matching contribution to the HSA of each employee who makes a pre-tax HSA contribution. Because Employer R's HSA contributions are made through the cafeteria plan, the comparability requirements do not apply to the HSA contributions made by Employer R. Consequently, Employer R is not required to provide written notice to its employees regarding the availability of this matching HSA contribution. See Q & A–1 in § 54.4980G–5 for treatment of HSA contributions made through a cafeteria plan.

Example 3. In a calendar year, Employer S maintains an HDHP and only contributes to the HSAs of eligible employees who elect coverage under its HDHP. For the 2009 calendar year, Employer S employs ten eligible employees and all ten employees have elected coverage under Employer S's HDHP and have established HSAs. For the 2009 calendar year, Employer S makes comparable contributions to the HSAs of all ten employees. Employer S satisfies the comparability rules. Thus, Employer S is not required to provide written notice to its employees regarding the availability of HSA contributions for eligible employees.

Example 4. In a calendar year, Employer T contributes to the HSAs of current full-time employees with family coverage under any HDHP. For the 2009 calendar year, Employer T provides timely written notice satisfying the content requirements of this section to all employees regardless of HDHP coverage. Employer T makes identical monthly contributions to all eligible employees (meaning full time employees with family HDHP coverage) that establish HSAs. Employer T contributes comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest to the HSAs of the eligible employees that establish HSAs and provide the necessary information after the end of the year but on or before the last day of February, 2010. Employer T makes no contribution to the HSAs of employees that do not establish an HSA or that do not provide the necessary information on or before the last day of February, 2010. Employer T satisfies the comparability requirements.

Example 5. For the 2009 calendar year, Employer V contributes to the HSAs of current full time employees with family coverage under any HDHP. Employer V has 500 current full time employees. As of the date for Employer V's first HSA contribution for the 2009 calendar year, 450 eligible employees have established HSAs. Employer V provides timely written notice satisfying the content requirements of this section only to those 50 eligible employees who have not established HSAs. Employer V makes identical quarterly contributions to the 450 eligible employees who established HSAs. By April 15, 2010, Employer V contributes comparable amounts to the other eligible employees who establish HSAs and provide the necessary information on or before the last day of February, 2010. Employer V makes no contribution to the HSAs of eligible employees that do not establish an HSA or that do not provide the necessary information on or before the last day of February, 2010. Employer V satisfies the comparability rules.

Q–15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

A–15: (a) *In general.* Yes. For any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions to the HSA of any such eligible employee, all accelerated contributions must be available throughout the calendar year on an equal and uniform basis to all such eligible employees. Employers must establish reasonable uniform methods and requirements for accelerated contributions and the determination of medical expenses.

(b) *Satisfying comparability.* An employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because employees who incur qualifying medical expenses exceeding the employer's cumulative HSA contributions at that time have received more contributions in a given period than comparable employees who do not incur such expenses, provided that all

comparable employees receive the same amount or the same percentage for the calendar year. Also, an employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more contributions on a monthly basis than employees who work the entire calendar year. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A–6 and Q & A–12 of this section for when reasonable interest must be paid.

Q–16: What is the effective date for the rules in Q & A–14 and Q & A–15 of this section?

A–16: These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009.

Approved: April 10, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–8214 Filed 4–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0114]

RIN 1625–AA87

Security Zone; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Anacostia River in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 7:30 a.m. through 2 p.m. on April 17, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0114 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 7, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Anacostia River, Washington, DC'' in the **Federal Register** (73 FR 12318). We received one letter, with an attached photo, commenting on the proposed rule. Based on this comment, no changes were made to the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It would be contrary to public interest to delay the effective date of this rule.

The Department of Homeland Security designated the 2008 Papal Visits in the United States as Special Events Awareness Report (SEAR) Level II. The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead federal agency for the events, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event.

The measures contemplated by the rule are intended to protect the public and high-ranking public officials by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact of a terrorist attack against a large number of participants, and the surrounding waterfront area and communities, in Washington, DC. This temporary security zone applies to all waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51′50″ N, 077°00′41″ W thence to 38°51′44″ N, 077°00′26″ W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. Although interference with normal port operations will be kept to the minimum considered necessary to ensure the security of life and property on the navigable waters immediately before, during, and after the scheduled event, this zone will help the Coast Guard to prevent vessels or persons from bypassing security measures for the event established and engaging in terrorist actions against a large number of participants during the highly-publicized event.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. No