

tested separately with respect to the employees of each qualified separate line of business operated by Employer B. This testing must be done in accordance with paragraph (b) of this section. Consequently, each component plan must satisfy section 410(b)(5)(B) on an employer-wide basis in accordance with paragraph (b)(2) of this section and must also satisfy section 410(b) on a qualified-separate-line-of-business basis in accordance with paragraph (b)(3) of this section.

*Example 3.* The facts are the same as in *Example 1*, except that Plan Z is a profit-sharing plan, and contributions to Plan Z are made pursuant to cash or deferred arrangement in which all employees of Employer B are eligible to participate. Assume that, as a result, Plan Z satisfies the requirements to be tested under the special rule for employer-wide plans in § 1.414(r)-1(c)(2)(ii). Under these facts, the requirements of sections 410(b), 401(a)(4) and 401(k), including the actual deferral percentage test of section 401(k)(3) and § 1.401(k)-1(b), would generally be required to be applied separately to the portions of Plan Z that benefit the employees of Line 1 and Line 2, respectively. However, if Plan Z is tested under the special rule in § 1.414(r)-1(c)(2)(ii), these requirements must be applied on an employer-wide basis.

(d) *Supplementary rules—(1) In general.* This paragraph (d) provides certain supplementary rules necessary for the application of this section.

(2) *Definition of plan.* For purposes of this section, the term *plan* means a plan within the meaning of § 1.410(b)-7(a) and (b), after application of the mandatory disaggregation rules of § 1.410(b)-7(c) (including the mandatory disaggregation rule for portions of a plan that benefit employees of different qualified separate lines of business) and the permissive aggregation rules of § 1.410(b)-7(d). Thus, for purposes of this section, the portion of a plan that benefits employees of one qualified separate line of business is treated as a separate plan from the other portions of the same plan that benefit employees of other qualified separate lines of business of the employer, unless the plan is tested under the special rule for employer-wide plans in § 1.414(r)-1(c)(2)(ii) for the plan year.

(3) *Employees of a qualified separate line of business.* For purposes of applying paragraph (b) of this section with respect to a testing day, the employees

of each qualified separate line of business of the employer are determined by applying § 1.414(r)-7 to the employees of the employer otherwise taken into account under section 410(b) for the testing day. For purposes of applying paragraph (c) of this section with respect to a testing day, the employees of each qualified separate line of business of the employer are determined by applying § 1.414(r)-7 to the employees of the employer otherwise taken into account under section 410(a)(4) for the testing day. For the definition of *testing day*, see § 1.414(r)-11(b)(6).

(4) *Consequences of failure.* If a plan fails to satisfy either paragraph (b)(2), (b)(3), or (c)(1) of this section, the plan (and any plan of which it constitutes a portion) fails to satisfy section 401(a). However, this failure alone does not cause the employer to fail to be treated as operating qualified separate lines of business in accordance with § 1.414(r)-1(b), unless the employer is relying on benefits provided under the plan to satisfy the minimum benefit portion of the safe harbor in § 1.414(r)-5(g)(2) with respect to at least one of its qualified separate lines of business.

[T.D. 8376, 56 FR 63457, Dec. 4, 1991, as amended by T.D. 8376, 57 FR 52591, Nov. 4, 1992; T.D. 8548, 59 FR 32921, June 27, 1994]

**§ 1.414(r)-9 Separate application of section 401(a)(26).**

(a) *General rule.* If an employer is treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)-1(b) for a testing year, the requirements of section 401(a)(26) must be applied separately with respect to the employees of each qualified separate line of business for purposes of testing all plans of the employer for plan years that begin in the testing year (other than a plan tested under the special rule for employer-wide plans in § 1.414(r)-1(c)(3)(ii) for such a plan year). Conversely, if an employer is not treated as operating qualified separate lines of business for purposes of section 401(a)(26) in accordance with § 1.414(r)-1(b) for a testing year, the requirements of section 401(a)(26) must be applied on an employer-wide basis for purposes of testing all plans of the employer for plan years that begin in the

testing years. See § 1.414(r)-1(c)(3) and (d)(6). Paragraph (b) of this section explains how the requirements of section 401(a)(26) are applied separately with respect to the employees of a qualified separate line of business for purposes of testing a plan. Paragraph (c) of this section provides certain supplementary rules necessary for the application of this section.

(b) *Requirements applicable to a plan.* If the requirements of section 401(a)(26) are applied separately with respect to the employees of a qualified separate line of business for a testing year, a plan (other than a plan that is tested under the special rule for employer-wide plans in § 1.414(r)-1(c)(3)(ii) for a plan year) satisfies section 401(a)(26) only if it satisfies the requirements of §§ 1.401(a)(26)-1 through 1.401(a)(26)-9 on a qualified-separate-line-of-business basis. For this purpose, the nonexcludable employees of the employer taken into account in testing the plan under section 401(a)(26) are determined under § 1.401(a)(26)-6(b), taking into account the exclusion in § 1.401(a)(26)-6(b)(8) for employees of other qualified separate lines of business of the employer. Thus, in testing a plan separately with respect to the employees of one qualified separate line of business under this paragraph (b), all employees of the employer's other qualified separate lines of business are treated as excludable employees.

(c) *Supplementary rules—(1) In general.* This paragraph (c) provides certain supplementary rules necessary for the application of this section.

(2) *Definition of plan.* For purposes of this section, the term *plan* mean a plan within the meaning of § 1.401(a)(26)-2(c) and (d), including the mandatory disaggregation rule of § 1.401(a)(26)-2(d)(6) for portions of a plan that benefit employees of different qualified separate lines of business. Thus, for purposes of this section, the portion of a plan that benefits employees of one qualified separate line of business is treated as a separate plan from the other portions of the same plan that benefit employees of other qualified separate lines of business of the employer, unless the plan is tested under

the special rule for employer-wide plans in § 1.414(r)-1(c)(3)(ii) for the plan year.

(3) *Employees of a qualified separate line of business.* For purposes of applying paragraph (b)(2) of this section with respect to a section 401(a)(26) testing day, the employees of each qualified separate line of business of the employer are determined by applying § 1.414(r)-7 to the employees of the employer otherwise taken into account under section 401(a)(26) for the section 401(a)(26) testing day. For the definition of *section 401(a)(26) testing day*, see § 1.414(r)-11(b)(8).

(4) *Consequences of failure.* If a plan fails to satisfy paragraph (b)(2) of this section, the plan (and any plan of which it constitutes a portion) fails to satisfy section 401(a). However, this failure alone would not cause the employer to fail to be treated as operating qualified separate lines of business in accordance with § 1.414(r)-1(b), unless the employer is relying on benefits provided under the plan to satisfy the minimum benefit portion of the safe harbor in § 1.414(r)-5(g)(2) with respect to at least one of its qualified separate lines of business.

[T.D. 8376, 56 FR 63459, Dec. 4, 1991]

**§ 1.414(r)-10 Separate application of section 129(d)(8). [Reserved]**

**§ 1.414(r)-11 Definitions and special rules.**

(a) *In general.* This section contains certain definitions and special rules applicable under these regulations. Paragraph (b) of this section provides certain definitions that apply for purposes of these regulations. Paragraph (c) of this section provides averaging rules under which certain provisions of these regulations may be applied on the basis of a two-year or a three-year average.

(b) *Definitions—(1) In general.* In applying the provisions of this section and of §§ 1.414(r)-1 through 1.414(r)-10, unless otherwise provided, the definitions in this paragraph (b) govern in addition to the definitions in § 1.410(b)-9.