**§ 892.5050 Medical charged-particle radiation therapy system.**

* * * * *

(b) *Classification*. Class II. When intended for use as a quality control system, the film dosimetry system (film scanning system) included as an accessory to the device described in paragraph (a) of this section, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

Dated: December 22, 1998.

**D.B. Burlington,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 99–380 Filed 1–7–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8806]**

**RIN 1545–AV94**

## Employee Stock Ownership Plans; Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations providing for changes to the rules regarding qualified retirement plan benefits that are protected from reduction by plan amendment, that have been made necessary by the Taxpayer Relief Act of 1997 (TRA '97). The final regulations change the existing final regulations to conform with the TRA '97 rules regarding in-kind distribution requirements for certain employee stock ownership plans, and specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating the prohibition against plan amendments that reduce accrued benefits. These final regulations affect sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants. The amendments to the temporary regulations remove previously issued temporary regulations on the same subject.

**DATES:** These regulations are effective January 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Linda S. F. Marshall, (202) 622–6030 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(d)(6). These regulations change the rules under section 411(d)(6) regarding qualified retirement plan benefits that are protected from reduction by plan amendment, to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105–34, 111 Stat. 788 (1997). On September 4, 1998, temporary regulations (TD 8781) under section 411(d)(6) were published in the **Federal Register** (63 FR 47172). A notice of proposed rulemaking (REG–101363–98), cross-referencing the temporary regulations, was published in the **Federal Register** (63 FR 47214) on the same day. The temporary regulations conform the regulations to the TRA '97 amendments to section 409 regarding the general requirement that employee stock ownership plans offer distributions in the form of employer securities. In addition, the temporary regulations specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating section 411(d)(6).

One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. The proposed regulations under section 411(d)(6) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

### Explanation of Provisions

Section 411(d)(6) provides that a plan is not treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Under section 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. Sections 1.411(d)–4, Q&A–1(b)(1) and 1.401(a)(4)–4(e) specify that different optional forms of benefit within the meaning of section 411(d)(6)(B) result from differences in the medium of a distribution (e.g., cash or in-kind) from a plan. Section 411(d)(6)(C) provides that any tax credit employee stock ownership plan or any employee stock ownership plan is not treated as failing to meet the requirements of section 411(d)(6) merely because it modifies distribution options in a nondiscriminatory manner.

*Special Rules Regarding Medium of Distribution From ESOPs*

Section 409(h) contains requirements relating to distributions from tax credit employee stock ownership plans. Section 4975(e)(7) extends the requirements of section 409(h) to other employee stock ownership plans as well, and section 401(a)(23) extends the requirements of section 409(h) to qualified plans that are stock bonus plans. Under section 409(h)(1)(A), an employee stock ownership plan or other stock bonus plan generally is required to make distributions available in the form of employer securities. Prior to its amendment by TRA '97, section 409(h)(2) provided an exception to this rule in the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a).

Under section 1361, certain small business corporations that do not have more than 75 shareholders are eligible to elect treatment as S corporations whose tax attributes generally flow through to shareholders in accordance with the rules of subchapter S of chapter 1 of subtitle A of the Internal Revenue Code. Prior to the Small Business Job Protection Act of 1996 (SBJPA), Public Law 104–188, 110 Stat. 1755 (1996), an S corporation could not maintain an employee stock ownership plan because an S corporation could not have a qualified trust described in section 401(a) as a shareholder. SBJPA amended the requirements for S corporations, effective for tax years beginning after December 31, 1996, to permit certain tax-exempt organizations, including qualified trusts described in section 401(a), to be S corporation shareholders.

TRA '97 made an additional change to the rules governing qualified plans holding securities of an S corporation employer, to make it easier for S corporation employers to facilitate employee ownership of employer securities through qualified plans. Section 1506 of TRA '97 extends the exception of section 409(h)(2) to cover S corporations, effective for taxable years beginning after December 31, 1997. Pursuant to this change, tax credit employee stock ownership plans, employee stock ownership plans, and other stock bonus plans established and maintained by S corporation employers are not required to offer distributions in the form of employer securities.

Section 1.411(d)–4, Q&A–2(d)(2)(ii) provides an exception from the requirements of section 411(d)(6) for plan amendments that eliminate optional forms of benefit from a tax credit employee stock ownership plan, an employee stock ownership plan, or a stock bonus plan, for certain employers. Section 1.411(d)–4, Q&A–2(d)(2)(ii) applies to employers that become substantially employee-owned, if the employer otherwise meets the requirements of section 409(h)(2) with respect to restrictions on the ownership of outstanding employer stock. These regulations retain the provision in the temporary regulations to expand the exception of § 1.411(d)–4, Q&A–2(d)(2)(ii) from the requirements of section 411(d)(6) to apply to S corporations as well, to reflect the TRA '97 changes to section 409(h).

*Rules for Plan Amendments Pursuant to TRA '97*

Section 1541 of TRA '97 contains provisions relating to plan amendments that are adopted as a result of TRA '97. If section 1541 applies to a plan amendment, section 1541(a) provides that the plan will be treated as operated in accordance with its terms and will not fail to satisfy the requirements of section 411(d)(6) by reason of the amendment. Section 1541 applies to a plan amendment that is made pursuant to a legislative change in the pension and employee benefit provisions of TRA '97, provided the following conditions are satisfied. First, the plan amendment must be adopted before the first day of the first plan year beginning on or after January 1, 1999 (2001, in the case of a governmental plan, as defined in section 414(d)). Second, the plan must be operated in accordance with the terms of the plan amendment, beginning on the date the legislative change takes effect, or, if the amendment is not required by the legislative change, the effective date of the amendment specified by the plan. Third, the plan amendment must be made retroactively effective.

The remedial amendment period for adopting plan amendments to which section 1541 of TRA '97 applies was extended pursuant to the rules of section 401(b) in Rev. Proc. 98–14 (1998–4 I.R.B. 22). To provide a uniform time for plan amendment, these regulations add a new § 1.411(d)–4, Q&A–11 to retain the rule of § 1.411(d)–4T, Q&A–11 of the temporary regulations extending the time for the section 411(d)(6) relief provided by section 1541 of TRA '97 to the end of the remedial amendment period for these plan amendments.

The sole commentator raised a concern regarding whether this extension of the time period for section 411(d)(6) relief originally provided under section 1541 of TRA '97 restricts the time during which any plan amendment can be made to eliminate in-kind distributions of employer securities from employee stock ownership plans of S corporations. The extension of the time period for this section 1541 statutory relief pursuant to § 1.411(d)–4, Q&A–11 does not restrict the time period during which a plan amendment can be made to eliminate these in-kind distributions as permitted under § 1.411(d)–4, Q&A–2(d)(2)(ii); to the contrary, the § 1.411(d)–4, Q&A–11 extension of this statutory relief period provides an additional time period for the adoption of certain plan amendments to eliminate these in-kind distributions after these in-kind distributions have been eliminated in operation. Under the ongoing rule of § 1.411(d)–4, Q&A–2(d)(2)(ii), a plan amendment to eliminate these in-kind distributions that is effective with respect to distributions payable after the date the amendment is adopted can be made at any time during taxable years of the employer beginning after December 31, 1997.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

§ 1.411(d)–4T also issued under 26 U.S.C. 411(d)(6). * * *

**Par. 2.** Section 1.411(d)–4 is amended by:

1. Revising Q&A–2(d)(2)(ii).
2. Removing the last sentence of Q&A–2(d)(3).
3. Adding Q&A–11.

The additions and revisions read as follows:

### § 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2: * * *

A–2: * * *

(d) * * *

(2) * * *

(ii) *Employer becomes substantially employee-owned or is an S corporation.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits subject to section 409(h) in the circumstances described in paragraph (d)(1)(ii)(A) or (B) of this Q&A–2, but only if the employer otherwise meets the requirements of section 409(h)(2)—

(A) The employer becomes substantially employee-owned; or

(B) For taxable years of the employer beginning after December 31, 1997, the employer is an S corporation as defined in section 1361.

* * * * *

Q–11: To what extent may a plan amendment that is made pursuant to the Taxpayer Relief Act of 1997 (TRA '97) (Public Law 105–34, 111 Stat. 788), reduce or eliminate section 411(d)(6) protected benefits?

A–11: A plan amendment does not violate the requirements of section 411(d)(6) merely because the plan amendment reduces or eliminates section 411(d)(6) protected benefits as of the effective date of the plan amendment, provided that—

(a) The plan amendment is made pursuant to an amendment made by title XV, or subtitle H of title X, of TRA '97; and

(b) The plan amendment is adopted no later than the last day of any

remedial amendment period that applies to the plan pursuant to §§ 1.401(b)–1 and 1.401(b)–1T for changes under TRA '97.

**§ 1.411(d)–4T [Removed]**

**Par. 3.** Section 1.411(d)–4T is removed.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 14, 1998.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 99–152 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 934

**[ND–037–FOR, Amendment No. XXVI]**

## North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions of its revegetation document pertaining to prime farmland success standards, cover standards for woodlands, wetlands success standards, recreational land use success standards for tree and shrub stocking, and methods for sampling woodland cover. The amendment was intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and improve operational efficiency.

**EFFECTIVE DATE:** January 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Field Office Director Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@OSMRE.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

### II. Proposed Amendment

By letter dated April 9, 1998, North Dakota submitted a proposed amendment to its program (Amendment Number XXVI), administrative record No. ND–AA–05) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(aa) and (bb), and at its own initiative. The provisions of its revegetation policy document that North Dakota proposed to revise were: (1) II–C–1, II–C–3, II–C–4, II–C–5, and II–C–6 of the Cropland section to modify prime farmland provisions; (2) II–F–7 of the Woodland section; (3) II–H–9 and II–H–12 of the Wetlands section; (4) II–I–1 and II–I–2 of the Other Land Uses section; and (5) III–D–6 of the Measurements section.

OSM announced receipt of the proposed amendment in the May 8, 1998, **Federal Register** (63 FR 25428), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–AA–07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 8, 1998.

### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on April 9, 1998, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

*1. Section II–C, Standards for Evaluation of Revegetation Success (Prime Farmland Standards)*

North Dakota proposed to revise Section II–C of ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments'' (hereinafter the revegetation policy document) to be consistent with its rules at NDAC 69–06.2–22–07 (3)(c) and (4)(d) and address a required program amendment at 30 CFR 934.16(aa).

North Dakota amended Section II–C to require that for third-stage bond release (equivalent to Phase II bond release under the Federal program) the prime farmland productivity standards must have been met for a minimum of three years. For at least two of the three years, spring wheat (the deepest rooting crop) must be used to demonstrate restoration of productivity. Barley or oats may be used for the other year. For fourth-stage bond release for prime farmlands (equivalent to phase III bond release under the Federal program), at least 10 years must have elapsed and the productivity standards for third-stage bond release must have been met.

The Federal regulations at 30 CFR 800.40(c)(2) require, in part, that no part of the bond or deposit shall be released under this paragraph until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16) of the Surface Mining and Reclamation Control Act and 30 CFR Part 823 of the Federal regulations. The Federal regulation at 30 CFR 823.15(b)(3) requires that the measurement period for determining average annual crop production on prime farmlands shall be a minimum of 3 crop years prior to release of the operator's performance bond.

OSM required, at 30 CFR 934.16(aa) of the Federal regulations, that North Dakota revise Chapter II, Section C of its revegetation policy document and its rules at NDAC 69–05.2–22–07(3)(c) and 69–05.2–2–26–05(3)(c) to require that, prior to third-stage bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years (62 FR 22889, 22892; April 28, 1997). OSM approved North Dakota's revisions to its rules as required by 30 CFR 934.16(aa).

The Director finds that proposed amendment to Section II–C of North Dakota's policy revegetation document parallels the approved revision to North Dakota's rules and is no less effective than the Federal regulations at 30 CFR 800.40(C)(2) and at 823.15(b)(3). The Director finds that North Dakota has, therefore, satisfied the required program amendment, approves the proposed revision, and removes the required amendment at 30 CFR 934.16(aa).

*2. Section II–F, Standards for Evaluation of Revegetation Success (Cover Standards for Woodlands)*

Existing Section II–F of North Dakota's revegetation policy document allows the use of herbaceous cover for evaluating the ground cover of woodland areas, a type of fish and wildlife habitat, at fourth-stage bond release. Herbaceous cover must be either