a section 8 contract without a Restructuring Plan under § 402.4 of this chapter, HUD or the PAE must notify, or ensure that the owner notifies, all parties identified in § 401.501 of the request and of:

(1) The availability (as provided in § 401.500(c)(3)) of the following information:

(i) The owner evaluation of physical condition (OEPC), or a comprehensive needs assessment (CNA) if used instead of an OEPC, as required by § 401.450 and § 402.6(a)(3) of this chapter;

(ii) The market analysis required by § 402.6(a)(2) of this chapter, but without addresses (or other specific information indicating location) for comparable properties; and

(iii) The items identified in § 401.500(b)(1)(i), (ii), and (iv); and

* * * * *

10. Revise the first sentence of § 401.550(b) to read as follows:

§ 401.550 Monitoring and compliance agreements.

* * * * *

(b) *Periodic monitoring and inspection.* At least once a year, a PAE must review the status of each project for which it developed an executed restructuring Plan. * * *

* * * * *

11. Revise the first sentence of § 401.554 to read as follows:

§ 401.554 Contract renewal and administration.

HUD will offer to renew or extend section 8 contracts as provided in each Restructuring Plan, subject to the availability of appropriations and subject to the renewal authority available at the time of each contract expiration (§ 402.5 of this chapter or another appropriate renewal authority). * * *

12. Revise the first sentence of § 401.558 to read as follows:

§ 401.558 Physical condition standards.

The Restructuring Plan must require the owner to maintain the project in a decent and safe condition that meets the applicable standards under this section. * * *

13. Revise § 401.595 to read as follows:

§ 401.595 Contract and regulatory provisions.

The provisions of chapter VIII of this title will apply to renewal of a section 8 project-based assistance contract under this part only to the extent, if any, provided in the contract. Part 983 of this title will not apply. The term of the contract renewals under this part will be determined by the appropriate HUD official.

14. Revise § 401.600 to read as follows:

§ 401.600 Will a section 8 contract be renewed if it would expire while an owner's request for a Restructuring Plan is pending?

If a section 8 contract for an eligible project would expire before a Restructuring Plan is implemented, the contract may be renewed at rents not exceeding current rents for up to the earlier of 1 year or closing on the Restructuring Plan under § 401.407. HUD may terminate the contract earlier if the PAE or HUD determines that an owner is not cooperative under § 401.402 or if an owner's request is rejected under § 401.403 or § 401.405. Any renewal of the contract beyond 1 year for a pending Restructuring Plan must be at comparable market rents or exception rents. A renewal at comparable market rents or exception rents under this section will not affect a project's eligibility for the Mark-to-Market Program once it has been initially established under this part.

15. Amend § 401.602 by revising the first sentence of paragraph (a)(1)(i), paragraph (a)(2), and paragraph (c)(1)(i) to read as follows:

§ 401.602 Tenant protections if an expiring contract is not renewed.

(a) *Required notices.* (1)(i) The owner of an eligible project who has requested a Restructuring Plan and contract renewal must provide a 12-month notice as provided in section 514(d) if MAHRA, if the owner later decides not to renew an expiring contract (except due to a rejection under §§ 401.101, 401.403, 401.405, or 401.451.) * * *

(2) The owner of an eligible project who has requested a Restructuring Plan but who has been rejected under §§ 401.101, 401.403, 401.405, or 401.451 must provide 12 months advance notice under section 8(c)(8)(A) of the United States Housing Act of 1937, unless project-based assistance is renewed under § 402.4 of this chapter.

* * * * *

(c) * * *

(i) If the owner of an eligible project does not renew the project-based assistance, any eligible tenant residing in a unit assisted under the expiring contract on the date of expiration will be eligible to receive assistance on the later of the date of expiration or the date the owner's obligations under paragraph (b) of this section expire; and

* * * * *

Dated: August 30, 2000.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 00–22788 Filed 9–5–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8900]

RIN 1545–AW27

Special Rules Regarding Optional Forms of Benefit Under Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that permit qualified defined contribution plans to be amended to eliminate some alternative forms in which an account balance can be paid under certain circumstances, and permit certain transfers between defined contribution plans that were not permitted under prior final regulations. These regulations affect qualified retirement plan sponsors, administrators, and participants.

DATES: These regulations are effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, 202–622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code of 1986 (Code).

Section 411(d)(6) generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Section 411(d)(6)(B), which was added by the Retirement Equity Act of 1984 (REA), Public Law 98–397 (98 Stat. 1426), provides that 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. However, section 411(d)(6)(B) authorizes the Secretary of the Treasury to provide exceptions to this requirement. This authority does not extend to a plan amendment that would

have the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy. Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829), provides a parallel rule to section 411(d)(6)(B) of the Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to provide exceptions to this parallel ERISA requirement. Thus, Treasury regulations issued under section 411(d)(6)(B) of the Code apply as well for purposes of section 204(g)(2) of ERISA.

Final regulations regarding section 411(d)(6)(B) (the 1988 regulations) were published in the **Federal Register** on July 8, 1988. The 1988 regulations, and subsequent amendments to the regulations, define the optional forms of benefit that are protected under section 411(d)(6)(B) and provide for certain exceptions to the general rule of section 411(d)(6)(B). In general, these regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit have been developed to address certain specific practical problems. For example, § 1.411(d)–4, Q&A–3(b) of the 1988 regulations permits a plan-to-plan transfer of a participant's entire nonforfeitable benefit to be made at the election of the participant, without a requirement that the transferee plan preserve all section 411(d)(6) protected benefits, but only if the participant is eligible to receive an immediate distribution and certain other conditions are satisfied. In addition, some regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit address plan amendments that are related to statutory changes. See Q&A–2(b) and Q&A–10 of § 1.411(d)–4.

The IRS and Treasury recognize that the accumulation of a variety of payment choices in a plan may increase the cost and complexity of plan operations. For example, an employer that initially adopted a plan for which the plan document was prepared by a prototype sponsor may now be using a different prototype plan that offers a different array of distribution forms. The requirement to preserve virtually all preexisting optional forms for benefits accrued up to the date of change in the prototype plan may present significant practical problems in certain cases. Similar issues arise where employers merge with or acquire other businesses. These employers often face issues of whether to maintain separate plans, terminate one or more of the plans, or merge the plans. If the employer chooses to merge the plans, the resulting plan may accumulate a wide variety of optional forms, some of which may differ in insignificant ways or may entail special administrative costs. Because the elective transfer rule of § 1.411(d)–4, Q&A–3(b) of the 1988 regulations has applied only to situations in which a participant's benefits have become distributable, its applicability has been limited.

In recent years, it has become easier for individuals to replicate the various payment choices available from qualified plans through other means. The Unemployment Compensation Amendments of 1992, Public Law 102–318 (106 Stat. 290), substantially expanded participants' ability to transfer distributions from qualified plans to individual retirement arrangements (IRAs) on a tax-deferred basis. Individuals who receive single-sum distributions from qualified plans frequently roll those distributions over directly to IRAs, under which distributions can be made in a wide variety of payment forms. There are also indications that the vast majority of participants in defined contribution plans who are given a choice of distribution forms that includes a single-sum distribution elect the single-sum distribution.

The IRS and Treasury issued Notice 98–29 (1998–1 C.B. 1163) to request public comment on several ways of providing regulatory relief from the requirements of section 411(d)(6)(B) for defined contribution plans in view of these considerations. Most of the public comments received in response to Notice 98–29 indicated that, particularly for defined contribution plans, the section 411(d)(6)(B) requirement that a plan continue to offer all existing payment options often imposes significant administrative burdens that are disproportionate to any corresponding benefit to participants. After considering the comments received in response to Notice 98–29, the IRS and Treasury issued proposed regulations (REG–109101–98), which were published in the **Federal Register** (65 FR 16546) on March 29, 2000, to propose relief from the requirements of section 411(d)(6)(B) in a wide range of circumstances.

Seventeen written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. Nearly all of the written comments expressed support for the provisions of the proposed regulation that would provide relief from the requirements of section 411(d)(6)(B) and requested clarifications or extensions of that relief in various ways. After consideration of all of the written comments, the IRS and the Treasury Department are adopting the proposed regulations as revised by this Treasury Decision for the reasons summarized below.

These final regulations under section 411(d)(6)(B) do not affect other requirements of the Code. For example, a money purchase pension plan (or a plan otherwise described in section 401(a)(11)(B)) generally must satisfy certain requirements relating to qualified joint and survivor annuities and qualified preretirement survivor annuities, and those requirements are not affected by these final regulations. Similarly, these final regulations do not affect the requirements of section 401(a)(31) relating to direct rollovers.

Explanation of Provisions

A. Permitted Amendments to Alternative Forms of Payment Under a Defined Contribution Plan

In order to simplify plan administration, these final regulations adopt a modified version of the rule set forth in the proposed regulations that significantly expands the permitted changes that may be made to alternative forms of payment under a defined contribution plan. Under the rule in the proposed regulations, a defined contribution plan would not violate the requirements of section 411(d)(6) merely because the plan was amended to eliminate or restrict the ability of a participant to receive payment of the participant's accrued benefit under a particular optional form of benefit if, after the plan amendment became effective with respect to the participant, the distribution choices available to the participant included both payment of the accrued benefit in a single-sum distribution form and payment of the accrued benefit in an extended payment form (such as, for example, an annuity distribution), each of which was otherwise identical to the eliminated or restricted optional form of benefit. In the preamble to the proposed regulations, the IRS and the Treasury Department requested comments on whether an extended payment form should be required to be preserved as part of such a plan amendment, or should be required to be preserved in particular circumstances.

In general, comments stated that the rule set forth in the proposed regulations would simplify plan administration. However, most commentators also indicated that requiring the retention of an extended payment form would perpetuate administrative burdens that would not be justified by any comparative advantage to plan participants. These

commentators pointed out various administrative burdens associated with retaining an extended payment form, such as maintaining a system to administer the extended payment form for the few (if any) participants who choose that payment form, including descriptions of the extended payment form in participant materials, explaining the extended payment form in response to participant inquiries, dealing with participant requests to accelerate distributions under the extended payment form, complying with the minimum required distribution rules of section 401(a)(9), and handling the problems that result from an increased incidence of missing participants. These commentators also pointed out the special burdens that maintenance of an extended payment option imposes in mergers and acquisitions. These commentators took the position that, in light of a participant's ability to roll over distributions to one or more IRAs, which commonly offer a far wider array of alternative payment forms, and in light of the ability of many participants to choose to retain their full vested account balance in the qualified plan, there is little or no advantage to the participant in rules requiring the plan sponsor to retain an option to receive extended payments from a qualified defined contribution plan.

After considering these comments regarding the desirability of requiring the retention of an extended payment form, and in light of the ability of participants to replicate any extended payment form that a defined contribution plan may offer by rolling over a single-sum distribution to an IRA, the IRS and the Treasury Department have determined that any advantages of requiring the retention of an extended payment form are outweighed by the countervailing considerations. Accordingly, these final regulations generally provide that a defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted. The final regulations adopt the rules set forth in the proposed regulations for determining whether a single-sum distribution is otherwise identical to an optional form of benefit that is being eliminated or restricted.

However, the final regulations include a provision that protects participants taking distributions shortly after the plan is amended, who may have planned on the availability of the payment form that is being eliminated or restricted. Under this provision, a plan amendment that eliminates or restricts the ability of a participant to receive a particular optional form of benefit cannot apply to any distribution that has an annuity starting date earlier than the 90th day [1] after the date the participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the requirements of the Labor Department regulations at 29 CFR 2520.104b–3 relating to a summary of material modifications for pension plans (or, if earlier, the first day of the second plan year following the plan year in which the amendment is adopted).

As noted above, the final regulations do not affect the survivor annuity requirements of sections 401(a)(11) and 417 or the direct rollover requirements of section 401(a)(31).

One commentator expressed concern that permitting plan amendments that eliminate alternative forms of payment would have the effect of permitting the elimination of subsidized early retirement benefits (*i.e.,* distribution forms available upon early retirement that have a higher actuarial value than the normal retirement benefit that has been accrued at the time the distribution begins). These regulations, however, permit plan amendments eliminating alternative forms of payment only in certain circumstances involving defined contribution plans. Under a defined contribution plan, a participant is entitled to a distribution, in whatever form may be provided under the plan, only to the extent of the participant's individual account, plus earnings thereon. Accordingly, no alternative form of payment can be subsidized relative to any other payment form available under a defined contribution plan. Thus, these regulations do not have the effect of permitting the elimination of any early retirement subsidy or any other subsidized benefit forms.

B. Voluntary Direct Transfers Between Plans

Under certain circumstances, the 1988 regulations permitted elimination of optional forms of benefit in connection with transfers of benefits from one plan to another with a participant's consent. See § 1.411(d)–4, Q&A–3(b) (as contained in 26 CFR part 1 revised April 1, 2000). The proposed regulations contained a number of changes to the 1988 regulations that would significantly liberalize the application of these elective transfer provisions. These final regulations generally finalize the provisions of the proposed regulations relating to elective transfers, with certain modifications that are described below.

The 1988 regulations permitted an elective transfer from one qualified plan to another only if the participant's benefit under the transferring plan was immediately distributable (a distributable event transfer). This condition precluded use of the elective transfer provision in the 1988 regulations in connection with merger and acquisition transactions involving plans with a cash or deferred arrangement under section 401(k) in cases in which benefits under the cash or deferred arrangement were not distributable because section 401(k)(10) was not applicable. In response to Notice 98–29, many commentators stated that permitting elective transfers from the former employer's section 401(k) plan to the new employer's section 401(k) plan under these circumstances would allow employers to permit employees to keep their previously earned retirement benefits in a qualified plan together with their newly earned retirement benefits, particularly in cases where the new employer chooses not to maintain the former employer's plan.

Section 1.411(d)–4, Q&A–3(c) of these final regulations retains and modifies the previously applicable section 411(d)(6) relief for distributable event transfers, and § 1.411(d)–4, Q&A–3(b) of these final regulations adds new section 411(d)(6) relief for transfers in connection with certain corporate mergers and acquisitions or changes in the participant's employment status (transaction or employment change transfers). As a result, relief from section 411(d)(6) applies in each of the following cases:

- *Direct rollover.* Existing rules provide that if a direct rollover is made from one qualified retirement plan to another, as described in section 401(a)(31), the receiving plan is not required by section 411(d)(6) to offer the same optional forms of benefit as the sending plan offered. See § 1.401(a)(31)–1, Q&A–14.
- *Distributable event transfer.* As discussed further below, in any case in

[1] This 90-day requirement is parallel to the 90-day election period applicable to any plan that is subject to the joint and survivor annuity requirements of section 417.

which a participant is entitled to a distribution from either a defined benefit plan or a defined contribution plan but the participant is not eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single–sum distribution that can be entirely rolled over, these final regulations provide section 411(d)(6) relief for a voluntary transfer. Thus, these regulations modify the distributable event transfer provisions of the 1988 regulations.

• *Transaction or employment change transfer.* As discussed further below, even if a participant is not entitled to a distribution to which the preceding rules would apply, these final regulations, like the proposed regulations, allow a voluntary transfer from a defined contribution plan to another defined contribution plan of the same type if the transfer occurs in connection with a corporate merger or acquisition or a change in the participant's employment status. See § 1.411(d)–4, Q&A–3(b).

Under certain circumstances, it may be possible to accomplish a voluntary transfer of a participant's benefit from one defined contribution plan to another that could be structured as either a distributable event transfer or a transaction or employment change transfer. In such a situation, the plans would be required to comply with the requirements applicable to either one of those sets of rules with respect to the transfer.

1. *Expansion of Section 411(d)(6) Relief for Distributable Event Transfers*

Under section 401(a)(31), which was enacted after the issuance of the 1988 regulations, any eligible rollover distribution may be directly rolled over to an IRA or to another eligible retirement plan. The section 411(d)(6) requirements do not apply to amounts that have been distributed, including distributions that are directly rolled over to another plan under section 401(a)(31). Accordingly, for amounts that are distributable in an eligible rollover distribution, the elective transfer rules of the 1988 regulations have largely been duplicated by the enactment of section 401(a)(31) because the same section 411(d)(6) result generally is available through a direct rollover. These final regulations generally eliminate this duplication. Under these final regulations, for transfers occurring on or after January 1, 2002, the distributable event transfer rules are not available if the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C). (Instead, the plan must offer a section 401(a)(31) direct rollover.) However, in other situations, including situations in which a single-sum distribution is not available or the participant's benefit includes an amount attributable to after-tax employee contributions, the distributable event transfer rules will be available.

Some commentators requested that plans have the ability to characterize a transfer that could be accomplished totally or in part as a direct rollover under section 401(a)(31) as a direct transfer to which section 411(d)(6) relief applies. They point out that this procedure is permitted under the 1988 regulations and that this procedure would simplify plan administration. These final regulations clarify that plans are not required to bifurcate a transaction into a partial section 401(a)(31) direct rollover and a partial elective transfer to which section 411(d)(6) relief applies, but that plans are permitted, as an alternative to bifurcation, to treat such a transaction entirely as an elective transfer to which section 411(d)(6) relief applies. However, as noted above, for transfers occurring on or after January 1, 2002, this section 411(d)(6) relief for distributable event transfers does not apply to an elective transfer that occurs at a time at which the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable account balance in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C). Instead, a similar result could be achieved by means of a direct rollover to which section 401(a)(31) applies.

Under the proposed regulations, the section 411(d)(6) relief for transfers of immediately distributable amounts other than eligible rollover distributions would only have applied to transfers between plans of the same type (*i.e.,* transfers from defined benefit plans to defined benefit plans and transfers from defined contribution plans to defined contribution plans), notwithstanding that the 1988 regulations granted section 411(d)(6) relief to transfers between plans of different types (*i.e.,* transfers from defined benefit plans to defined contribution plans and vice versa). The preamble specifically requested comments on whether section 411(d)(6) relief was needed for distributable event transfers between different types of plans, given the availability of direct rollovers. Several commentators stated that this section 411(d)(6) relief provided under the 1988 regulations was still valuable and also requested clarification that the relief applied to transfers of amounts that were immediately distributable only in the form of periodic payments commencing immediately. These final regulations adopt both of these recommendations.

2. Section 411(d)(6) Relief for Transaction or Employment Change Transfers

Section 1.411(d)–4, Q&A–3(b) of these final regulations retains and, in some respects, expands provisions of the proposed regulations that grant, subject to certain conditions, broad section 411(d)(6) relief for many types of elective transfers of a participant's entire benefit under a defined contribution plan, whether or not the benefit is immediately distributable (and whether or not the participant would be eligible for a distribution of the participant's entire benefit in a single-sum distribution that would be an eligible rollover distribution). In order to ensure that the participant's election occurs in connection with an independent event (and is not, in effect, a mere waiver), the transfer must be made either in connection with certain corporate transactions (such as a merger or acquisition) or in connection with a participant's change in employment status (for example, the participant's transfer to a different subsidiary or division of the employer, without regard to whether the transfer constitutes a separation from service) to an employment status with respect to which the participant is not entitled to additional allocations under the transferor plan, even if the event is not one that triggers the right to an immediate distribution. Such elective transfers can be made to a plan that is outside the employer's controlled group, to another plan of the same employer, or to a plan that is maintained by another member of the employer's controlled group.

A transaction or employment change transfer may involve benefits that are not fully vested under the transferor plan. However, where a participant's benefit that is not fully vested under the transferor plan is transferred pursuant to these rules, the vesting schedule amendment requirements of section 411(a)(10) must be satisfied.

A transaction or employment change transfer generally is only permitted between defined contribution plans of the same type (*e.g.,* from a qualified cash or deferred arrangement under section 401(k) to another qualified cash or deferred arrangement). The restrictions on the types of plans

between which transaction or employment change transfers are permitted facilitate administration of the qualified plan distribution rules by ensuring that amounts transferred to the receiving plan, in a transfer that is not itself a distribution, will be subject to similar legal restrictions with respect to in-service distributions. See Rev. Rul. 94–76 (1994–2 C.B. 46). In the case of transfers from plans that are subject to the survivor annuity requirements of sections 401(a)(11)(A) and 417, those survivor annuity requirements would in any event apply to the receiving plan with respect to the transferred amount as a result of the transferee plan rule of section 401(a)(11)(B)(iii)(III).

In response to comments, the final regulations clarify that the right to a transaction or employment change transfer is an other right or feature for purposes of section 401(a)(4) (unlike a distributable event transfer, which is treated as an optional form of benefit for purposes of section 401(a)(4)). In applying section 401(a)(4) to a transaction or employment change transfer right, the final regulations permit certain conditions to be disregarded. Thus, for example, section 401(a)(4) would be satisfied if, with respect to all participants: (1) The plan provides a transfer right in the event that an employee ceases to be covered by the plan because of any asset or stock disposition, merger or other similar business transaction involving a change of the employer; (2) the plan provides a transfer right in the event that an employee ceases to be covered by the plan because of an identified asset or stock disposition, merger or other similar business transaction that involves a change of the employer; or (3) the plan provides a transfer right in the event that an employee ceases to be covered by the plan because of a transfer of employment to a position covered by another plan within the employer's controlled group.

C. Rules Regarding In-Kind Distributions

The final regulations clarify and modify the rules regarding the application of the protections of section 411(d)(6)(B) to a right to receive benefit distributions in kind from defined contribution plans and defined benefit plans. Provisions for distribution in kind are sometimes found, for example, in plans invested in annuity contracts or in marketable mutual funds. The right to a particular form of investment is not a protected optional form of benefit. However, the investments made by a plan generally are subject to fiduciary requirements, including the prudence requirement of section 404(a)(1)(B) of ERISA. The 1988 regulations state that the right to a medium of distribution, such as cash or in-kind payments, is an optional form of benefit to which section 411(d)(6)(B) applies.

The proposed regulations provided that, if a defined benefit plan included an optional form of benefit under which benefits were distributed in the medium of an annuity contract, that optional form of benefit could be modified by substituting cash for the annuity contract. The proposed regulations separately provided a similar rule for defined contribution plans that provided an annuity optional form of benefit and for distribution of an annuity contract, and that substituted a non-annuity optional form of benefit for the annuity form. These final regulations combine and simplify these two rules. The final regulations clarify that a participant's right to receive a particular benefit in the form of cash payments from either a defined benefit plan or a defined contribution plan and a participant's right to receive that benefit in the form of the distribution of an annuity contract that provides for cash payments that are otherwise identical in all respects to those cash payments from the plan are not separate optional forms of benefit. Therefore, for example, if a plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract that provides for cash payments, that optional form of benefit may be modified by a plan amendment that substitutes cash payments from the plan for the distribution of the annuity contract, where those cash payments from the plan are identical to the cash payments payable from the annuity contract in all respects except for the source of the payments. Of course, a defined contribution plan that continues to offer a life annuity form of distribution must purchase an annuity contract from an insurance carrier in order to provide that optional form (and the plan may either distribute that contract to the participant or hold the contract as a plan asset from which it makes the payments for the participant).

These final regulations permit a defined contribution plan to be amended to replace the ability to receive a distribution in the form of marketable securities (other than employer securities) with the ability to receive a distribution in the form of cash. Thus, the right to distributions from a defined contribution plan in the form of cash, employer securities or other property that is not marketable securities is generally protected. The protection for employer securities reflects the potential value of the special tax treatment provided to net unrealized appreciation (NUA) on employer securities under section 402(e)(4). The protection for assets that are not marketable securities reflects that possibility that a participant may assign a higher value to such assets than the plan without the participant having the ability to acquire the asset after receiving a cash distribution.

The proposed regulations would permit a defined contribution plan that gives a participant the right to an in-kind distribution (including employer securities and property that is not marketable securities) to be amended to limit the types of property in which distributions can be made to a participant to specific types of property allocated to the participant's account at the time of the amendment (and with respect to which the participant had the right to receive an in-kind distribution before the plan amendment). In addition, the proposed regulations would permit a defined contribution plan giving a participant the right to a distribution in a type of property to be amended to specify that the participant is permitted to receive a distribution in that type of property only to the extent that the plan assets allocated to the participant's account at the time of the distribution include that type of property.

These provisions of the proposed regulations were supported by commentators and have been adopted in these final regulations. In response to commentator suggestions, the examples from the proposed regulations have been modified in these regulations to clarify that a plan amendment that limits the right of a distribution in specified types of property to certain participants, as permitted by these regulations, need not itself contain a list of those participants. These provisions of the final regulations do not permit a plan to be amended in a way that affects protected features of optional forms of benefit other than the medium of distribution.

Effective Date and Applicability Date

These final regulations are effective September 6, 2000. These final regulations apply to plan amendments that are adopted and effective on or after September 6, 2000, except as provided in § 1.411(d)–4, Q&A–2(e)(1)(ii) and Q&A–3(c)(1)(ii).

Special Analyses

It has been determined that this Treasury decision is 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, 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 Code, the notice of proposed rulemaking preceding these regulations was 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 regulations is Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

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

PAR. 2. Section 1.411(d)–4 is amended as follows:

1. In Q&A–1, paragraph (b)(1), the last sentence is amended by removing the language ''§ 1.401(a)(4)–4(d)'' and adding ''§ 1.401(a)(4)–4(e)(1)'' in its place.

2. Q&A–2 is amended by:

a. In paragraph (a)(1), removing the language ''in paragraph (b) of this Q&A–2'' and adding the language ''in this section'' in its place.

b. Adding two sentences at the beginning of paragraph (a)(3)(ii)(A).

c. Revising the second sentence of paragraph (b)(2) introductory text.

d. Revising paragraph (b)(2)(iii).

e. Amending paragraph (b)(2)(viii) by removing the language '' of the employer''.

f. Adding paragraph (e).

3. Q&A–3 is amended by:

a. Revising paragraph (a)(3).

b. Adding paragraph (a)(4).

c. Revising paragraphs (b), (c), and (d).

The additions and revisions read as follows:

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

* * * * *

A–2: * * *

(a) * * *

(3) * * *

(ii) *Annuity contracts*—(A) *General rule.* The right of a participant to receive a benefit in the form of cash payments from the plan and the right of a participant to receive that benefit in the form of the distribution of an annuity contract that provides for cash payments that are identical in all respects to the cash payments from the plan except with respect to the source of the payments are not separate optional forms of benefit. Therefore, for example, if a plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract that provides for cash payments, that optional form of benefit may be modified by a plan amendment that substitutes cash payments from the plan for the annuity contract, where those cash payments from the plan are identical to the cash payments payable from the annuity contract in all respects except with respect to the source of the payments. * * *

* * * * *

(b) * * *

(2) * * * The rules with respect to permissible eliminations and reductions provided in this paragraph (b)(2) generally are effective January 30, 1986; however, the rules of paragraphs (b)(2)(iii) (A) and (B) and (b)(2)(viii) of this Q&A–2 are effective for plan amendments that are adopted and effective on or after September 6, 2000. * * *

* * * * *

(iii) *In-kind distributions*—(A) *In-kind distributions payable under defined contribution plans in the form of marketable securities other than employer securities.* If a defined contribution plan includes an optional form of benefit under which benefits are distributed in the form of marketable securities, other than securities of the employer, that optional form of benefit may be modified by a plan amendment that substitutes cash for the marketable securities as the medium of distribution. For purposes of this paragraph (b)(2)(iii)(A) and paragraph (b)(2)(iii)(B) of this Q&A–2, the term *marketable securities* means marketable securities as defined in section 731(c)(2), and the term *securities of the employer* means securities of the employer as defined in section 402(e)(4)(E)(ii).

(B) *Amendments to defined contribution plans to specify medium of distribution.* If a defined contribution plan includes an optional form of benefit under which benefits are distributable to a participant in a medium other than cash, the plan may be amended to limit the types of property in which distributions may be made to the participant to the types of property specified in the amendment. For this purpose, the types of property specified in the amendment must include all types of property (other than marketable securities that are not securities of the employer) that are allocated to the participant's account on the effective date of the amendment and in which the participant would be able to receive a distribution immediately before the effective date of the amendment if a distributable event occurred. In addition, a plan amendment may provide that the participant's right to receive a distribution in the form of specified types of property is limited to the property allocated to the participant's account at the time of distribution that consists of property of those specified types.

(C) *In-kind distributions after plan termination.* If a plan includes an optional form of benefit under which benefits are distributed in specified property, that optional form of benefit may be modified for distributions after plan termination by substituting cash for the specified property as the medium of distribution to the extent that, on plan termination, an employee has the opportunity to receive the optional form of benefit in the form of the specified property. This exception is not available, however, if the employer that maintains the terminating plan also maintains another plan that provides an optional form of benefit under which benefits are distributed in the specified property.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(2)(iii):

Example 1. (i) An employer maintains a profit-sharing plan under which participants may direct the investment of their accounts. One investment option available to participants is a fund invested in common stock of the employer. The plan provides that the participant has the right to a distribution in the form of cash upon termination of employment. In addition, the plan provides that, to the extent a participant's account is invested in the employer stock fund, the participant may receive an in-kind distribution of employer stock upon termination of employment. On October 18, 2000, the plan is amended, effective on January 1, 2001, to remove the fund invested in employer common stock as an investment option under the plan and to provide for the stock held in the fund to be sold. The amendment permits participants to elect how the sale proceeds are to be reallocated among the remaining investment options, and provides for amounts not so reallocated as of January 1, 2001, to be allocated to a specified investment option.

(ii) The plan does not fail to satisfy section 411(d)(6) solely on account of the plan amendment relating to the elimination of the employer stock investment option, which is not a section 411(d)(6) protected benefit. See paragraph (d)(7) of Q&A–1 of this section. Moreover, because the plan did not provide for distributions of employer securities except to the extent participants' accounts were invested in the employer stock fund, the plan is not required operationally to offer distributions of employer securities following the amendment. In addition, the plan would not fail to satisfy section 411(d)(6) on account of a further plan amendment, effective after the plan has ceased to provide for an employer stock fund investment option (and participants' accounts have ceased to be invested in employer securities), to eliminate the right to a distribution in the form of employer stock. See paragraph (b)(2)(iii)(B) of this Q&A–2.

Example 2. (i) An employer maintains a profit-sharing plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution either in cash or in kind. The plan's investments are limited to a fund invested in employer stock, a fund invested in XYZ mutual funds (which are marketable securities), and a fund invested in shares of PQR limited partnership (which are not marketable securities).

(ii) The following alternative plan amendments would not cause the plan to fail to satisfy section 411(d)(6):

(A) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership. See paragraph (b)(2)(iii)(A) of this Q&A–2.

(B) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that also provides that only participants with employer stock allocated to their accounts as of the effective date of the amendment have the right to distributions in the form of employer stock, and that only participants with shares of PQR limited partnership allocated to their accounts as of the effective date of the amendment have the right to distributions in the form of shares of PQR limited partnership. To comply with the plan amendment, the plan administrator retains a list of participants with employer stock allocated to their accounts as of the effective date of the amendment, and a list of participants with shares of PQR limited partnership allocated to their accounts as of the effective date of the amendment. See paragraphs (b)(2)(iii) (A) and (B) of this Q&A–2.

(C) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership to the extent that those assets are allocated to the participant's account at the time of the distribution. See paragraphs (b)(2)(iii) (A) and (B) of this Q&A–2.

(D) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that provides that only participants with employer stock allocated to their accounts as of the effective date of the amendment have the right to distributions in the form of employer stock, and that only participants with shares of PQR limited partnership allocated to their accounts as of the effective date of the amendment have the right to distributions in the form of shares of PQR limited partnership, and that further provides that the distribution of that stock or those shares is available only to the extent that those assets are allocated to those participants' accounts at the time of the distribution. To comply with the plan amendment, the plan administrator retains a list of participants with employer stock allocated to their accounts as of the effective date of the amendment, and a list of participants with shares of PQR limited partnership allocated to their accounts as of the effective date of the amendment. See paragraphs (b)(2)(iii) (A) and (B) of this Q&A–2.

Example 3. (i) An employer maintains a stock bonus plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution in employer stock. This is the only plan maintained by the employer under which distributions in employer stock are available. The employer decides to terminate the stock bonus plan.

(ii) If the plan makes available a single-sum distribution in employer stock on plan termination, the plan will not fail to satisfy section 411(d)(6) solely because the optional form of benefit providing a single-sum distribution in employer stock on termination of employment is modified to provide that such distribution is available only in cash. See paragraph (b)(2)(iii)(C) of this Q&A–2.

* * * * *

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans*—(1) *General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if—

(i) After the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted; and

(ii) The amendment does not apply to the participant with respect to any distribution with an annuity starting date that is earlier than the earlier of—

(A) The 90th day after the date the participant has been furnished a summary that reflects the amendment and that satisfies the requirements of 29 CFR 2520.104b–3 (relating to a summary of material modifications) for pension plans; or

(B) The first day of the second plan year following the plan year in which the amendment is adopted.

(2) *Otherwise identical single-sum distribution.* For purposes of this paragraph (e), a single-sum distribution form is otherwise identical to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A–2 only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, or imposes any condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Examples.* The following examples illustrate the application of this paragraph (e):

Example 1. (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Plan M provides that distributions on the death of a participant are made in accordance with section 401(a)(11)(B)(iii)(I). On May 15, 2001, Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of

the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). The amendment does not apply to P if P elects to have annuity payments begin before the earlier of January 1, 2003, or 90 days after the date on which the plan administrator of Plan M furnishes P with a summary that reflects the amendment and that satisfies the requirements of 29 CFR 2520.104b–3. On December 14, 2001, the plan administrator of Plan M furnishes P with a summary plan description that reflects the amendment and that satisfies the requirements of 29 CFR 2520.104b–3.

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of March 14, 2002, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

Example 2. (i) P is a participant in Plan M, a qualified profit-sharing plan to which section 401(a)(11)(A) does not apply. Upon termination of employment, P is entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)), in the form of a single-sum distribution, or in substantially equal monthly installment payments over either 5, 10, 15, or 20 years. On May 15, 2001, Plan M is amended so that, after the amendment is effective, P is no longer entitled to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, 15, or 20 years. However, after the amendment is effective, P continues to be entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)), in the form of a single-sum distribution. The amendment does not apply to P if P elects to have annuity payments begin before January 1, 2002. On September 20, 2001, the plan administrator of Plan M furnishes P with a summary of material modifications that reflects the amendment and that satisfies the requirements of 29 CFR 2520.104b–3.

(ii) Plan M does not violate the requirements of section 411(d)(6) merely because, as of January 1, 2002, the plan amendment has eliminated P's option to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, 15, or 20 years.

(4) *Effective date.* This paragraph (e) applies to plan amendments that are adopted on or after September 6, 2000.

* * * * *

A–3. (a) * * *

(3) *Waiver prohibition.* In general, except as provided in paragraph (b) of this Q&A–3, a participant may not elect to waive section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of a participant's benefit under a defined benefit plan by reason of a transfer of such benefits to a defined contribution plan pursuant to a participant election, at a time when the benefit is not distributable to the participant, violates section 411(d)(6).

(4) *Direct rollovers.* A direct rollover described in Q&A–3 of § 1.401(a)(31)–1 that is paid to a qualified plan is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l), and is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6) and paragraph (a)(1) of this Q&A–3. Therefore, for example, if such a direct rollover is made to another qualified plan, the receiving plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefit that were provided under the plan that made the direct rollover. See § 1.401(a)(31)–1, Q&A–14.

(b) *Elective transfers of benefits between defined contribution plans*—(1) *General rule.* A transfer of a participant's entire benefit between qualified defined contribution plans (other than any direct rollover described in Q&A–3 of § 1.401(a)(31)–1) that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if the following requirements are met—

(i) *Voluntary election.* The plan from which the benefits are transferred must provide that the transfer is conditioned upon a voluntary, fully-informed election by the participant to transfer the participant's entire benefit to the other qualified defined contribution plan. As an alternative to the transfer, the participant must be offered the opportunity to retain the participant's section 411(d)(6) protected benefits under the plan (or, if the plan is terminating, to receive any optional form of benefit for which the participant is eligible under the plan as required by section 411(d)(6)).

(ii) *Types of plans to which transfers may be made.* To the extent the benefits are transferred from a money purchase pension plan, the transferee plan must be a money purchase pension plan. To the extent the benefits being transferred are part of a qualified cash or deferred arrangement under section 401(k), the benefits must be transferred to a qualified cash or deferred arrangement under section 401(k). To the extent the benefits being transferred are part of an employee stock ownership plan as defined in section 4975(e)(7), the benefits must be transferred to another employee stock ownership plan. Benefits transferred from a profit-sharing plan other than from a qualified cash or deferred arrangement, or from a stock bonus plan other than an employee stock ownership plan, may be transferred to any type of defined contribution plan.

(iii) *Circumstances under which transfers may be made.* The transfer must be made either in connection with an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business (*i.e.*, an acquisition or disposition within the meaning of § 1.410(b)–2(f)) or in connection with the participant's change in employment status to an employment status with respect to which the participant is not entitled to additional allocations under the transferor plan.

(2) *Applicable qualification requirements.* A transfer described in this paragraph (b) is a transfer of assets or liabilities within the meaning of section 414(l)(1) and, thus, must satisfy the requirements of section 414(l). In addition, this paragraph (b) only provides relief under section 411(d)(6); a transfer described in this paragraph must satisfy all other applicable qualification requirements. Thus, for example, if the survivor annuity requirements of sections 401(a)(11) and 417 apply to the plan from which the benefits are transferred, as described in this paragraph (b), but do not otherwise apply to the receiving plan, the requirements of sections 401(a)(11) and 417 must be met with respect to the transferred benefits under the receiving plan. In addition, the vesting provisions under the receiving plan must satisfy the requirements of section 411(a)(10) with respect to the amounts transferred.

(3) *Status of elective transfer as other right or feature.* A right to a transfer of benefits from a plan pursuant to the elective transfer rules of this paragraph (b) is an other right or feature within the meaning of § 1.401(a)(4)–4(e)(3), the availability of which is subject to the nondiscrimination requirements of section 401(a)(4) and § 1.401(a)(4)–4. However, for purposes of applying the rules of § 1.401(a)(4)–4, the following conditions are to be disregarded in determining the employees to whom the other right or feature is available—

(i) A condition restricting the availability of the transfer to benefits of participants who are transferred to a different employer in connection with a specified asset or stock disposition, merger, or other similar transaction involving a change in employer of the employees of a trade or business (*i.e.*, a disposition within the meaning of § 1.410(b)–2(f)), or in connection with any such disposition, merger, or other similar transaction.

(ii) A condition restricting the availability of the transfer to benefits of participants who have a change in employment status to an employment status with respect to which the participant is not entitled to additional allocations under the transferor plan.

(c) *Elective transfers of certain distributable benefits between qualified plans*—(1) *In general.* A transfer of a participant's benefits between qualified plans that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if—

(i) The transfer occurs at a time at which the participant's benefits are distributable (within the meaning of paragraph (c)(3) of this Q&A–3);

(ii) For a transfer that occurs on or after January 1, 2002, the transfer occurs at a time at which the participant is not eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C);

(iii) The voluntary election requirements of paragraph (b)(1)(i) of this Q&A–3 are met;

(iv) The participant is fully vested in the transferred benefit in the transferee plan;

(v) In the case of a transfer from a defined contribution plan to a defined benefit plan, the defined benefit plan provides a minimum benefit, for each participant whose benefits are transferred, equal to the benefit, expressed as an annuity payable at normal retirement age, that is derived solely on the basis of the amount transferred with respect to such participant; and

(vi) The amount of the benefit transferred, together with the amount of any contemporaneous section 401(a)(31) direct rollover to the transferee plan, equals the entire nonforfeitable accrued benefit under the transferor plan of the participant whose benefit is being transferred, calculated to be at least the greater of the single-sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued benefit payable at normal retirement age (calculated by using interest and mortality assumptions that satisfy the requirements of section 417(e) and subject to the limitations imposed by section 415).

(2) *Treatment of transfer*—(i) *In general.* A transfer of benefits pursuant to this paragraph (c) generally is treated as a distribution for purposes of section 401(a). For example, the transfer is subject to the cash-out rules of section 411(a)(7), the early termination requirements of section 411(d)(2), and the survivor annuity requirements of sections 401(a)(11) and 417. A transfer pursuant to the elective transfer rules of this paragraph (c) is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(ii) *Status of elective transfer as optional form of benefit.* A right to a transfer of benefits from a plan pursuant to the elective transfer rules of this paragraph (c) is an optional form of benefit under section 411(d)(6), the availability of which is subject to the nondiscrimination requirements of section 401(a)(4) and § 1.401(a)(4)–4.

(3) *Distributable benefits.* For purposes of paragraph (c)(1)(i) of this Q&A–3, a participant's benefits are distributable on a particular date if, on that date, the participant is eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution of these benefits (*e.g.*, in the form of an immediately commencing annuity) from that plan under provisions of the plan not inconsistent with section 401(a).

(d) *Effective date.* This Q&A–3 is applicable for transfers made on or after September 6. 20000.

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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 28, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–22668 Filed 8–31–00; 2:25 pm]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–226–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its final action to preempt and supersede portions of Kentucky Revised Statute (KRS) 350.060(16). The 1998 Kentucky General Assembly enacted this provision, which pertains to the renewal of expired permits, into law by passing House Bill 593.

It proposed that if a permit has expired or a permit renewal application has not been timely filed and the operator or permittee wants to continue the surface coal mining operation, Kentucky will issue a notice of noncompliance (NOV). The NOV will be considered complied with, and the permit may be renewed, if Kentucky receives a permit renewal application within 30 days of the receipt of the NOV. Upon submittal of a permit renewal application, the operator or permittee will be deemed to have timely filed the application and can continue, under the terms of the expired permit, the mining operation, pending issuance of the permit renewal. Failure to comply with the remedial measures of the NOV will result in the cessation of the operation.

Portions of this provision would allow a permittee to continue mining on an expired permit after the permit renewal application has been filed within 30 days of the receipt of the NOV, regardless of whether the application is timely filed, and even if the application is filed after permit expiration.

OSM is taking this action because the provisions are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This determination is based on reasons cited in the ''Director's Findings'' section in a separate notice published on May 10, 2000 (65 FR 29949), announcing disapproval of the statutory provision.

EFFECTIVE DATE: September 6, 2000.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

You can find detailed background on the actions proposed in this document in a notice of final rulemaking pertaining to the Kentucky program published on May 10, 2000 (65 FR 29949).

II. Summary and Disposition of Comments

We received one comment supporting the proposed action to preempt.