

compliance issue that can be resolved using the current regulatory structure.

2. *Ensure the Secure Use and Management of Radioactive Materials:* The requested regulatory amendments would have no impact on the security provisions necessary for the secure use and management of radioactive materials. The petition for rulemaking deals with the taking of protective actions for nursery schools and day care centers by offsite authorities, which is currently required by NRC and FEMA regulations and guidance.

3. *Ensure Openness in Our Regulatory Process:* The requested rulemaking would not enhance openness or public confidence in our regulatory process because the petitioners' requests raise potential issues of compliance with the existing requirements and guidance. The NRC staff does not believe that the contentions identify deficiencies in regulatory requirements. Appendix 4 in NUREG-0654, discusses "special facility populations." Daycare centers and nursery schools fall under the definition of "special facility populations" and as such, state and local governments are currently required to ensure that these populations are included in the offsite emergency response plans. It should be noted, however, that 3000 members of the public co-signed the original petition for rulemaking. Additionally, 410 members of the public signed letters supporting the petition. This amount of public support reinforces the importance of NRC and FEMA's continued commitment to providing protection for the public in the event of an emergency which has always included daycare centers and nursery schools.

4. *Ensure that NRC Actions Are Effective, Efficient, Realistic and Timely:* The proposed revisions would decrease efficiency and effectiveness because current NRC and FEMA regulations and guidance already adequately address the petition requests.

Amending the regulations would require licensees and state and local governments to generate additional and more prescriptive information in their emergency plans, and the NRC and FEMA staffs would need to evaluate the additional information. The additional NRC staff and licensee effort would not improve efficiency or effectiveness. In addition, the NRC resources expended to promulgate the rule and supporting regulatory guidance would be significant with little return value.

5. *Ensure Excellence in Agency Management:* The requested rule would have no effect on the excellence in NRC management, but would increase

licensee and state and local government burden by requiring the generation of additional, unnecessary, and burdensome information with little expected benefit because current NRC and FEMA regulations and guidance already adequately address the petition requests. This rulemaking would add significant burden on a national scale in order to address a potential local compliance issue.

#### Reason For Denial

The Commission is denying the petition for rulemaking (PRM-50-79) submitted by Mr. Lawrence T. Christian, *et al.* Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending daycare centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, the NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, Eric Epstein dated respectively, March 23, 2005 and March 24, 2005.<sup>2</sup> Copies of those letters are available through the NRC's ADAMS document system and can be located using accession numbers ML050590344 and ML050590357, respectively. The NRC staff will continue to work with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.

For these reasons, the Commission denies PRM-50-79.

Dated at Rockville, Maryland, this 13th day of December, 2005.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

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**BILLING CODE 7590-01-P**

<sup>2</sup> FEMA did evaluate a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-158080-04]

RIN 1545-BE79

#### Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

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

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Tuesday, October 4, 2005 (70 FR 57930) regarding the application of section 409A to nonqualified deferred compensation plans. The regulations affect service providers receiving amounts of deferred compensation, and the service recipients for whom the service providers provide services.

**FOR FURTHER INFORMATION CONTACT:** Stephen Tackney, (202) 927-9639 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking (REG-158080-04) that is the subject of these corrections are under section 409A of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking (REG-158080-04) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-158080-04), that was the subject of FR Doc. 05-19379, is corrected as follows:

1. On page 57930, column 3, in the preamble under the paragraph heading "*B. Section 457 Plans*", second paragraph, third line from the bottom of the column, the language, "under § 1.409A-1(b)(5) of these" is corrected to read "under § 1.409A-1(b)(4) or (5)".
2. On page 57931, column 1, in the preamble under the paragraph heading "*B. Section 457 Plans*", first paragraph of the column, third line from the bottom, the language, "1(a)(4) of these proposed regulations to" is corrected to read "1(a)(5) of these proposed regulations to".
3. On page 57933, column 1, in the preamble under the paragraph heading

“*B. Short-Term Deferrals*”, first paragraph of the column, last of the paragraph, the language, “in year 10.” is corrected to read “in Year 10.”.

4. On page 57934, column 2, in the preamble under the paragraph heading “*2. Definition of Service Recipient Stock*”, second paragraph of the column, fourth line, the language, “provider stock may include American” is corrected to read “recipient stock may include American”.

5. On page 57937, column 1, in the preamble under the paragraph heading “*D. Restricted Property*”, second paragraph of the column, line 21, the language, “payment for purposes section 409A,” is corrected to read “payment for purposes of section 409A.”.

6. On page 57948, column 2, in the preamble under the paragraph heading “*E. Change in Ownership or Effective Control of the Corporation*”, last paragraph of the column, line 13, the language, “3(g)(5)(iv)) or a change in the ownership” is corrected to read “3(g)(5)(v)) or change in the ownership”.

7–8. On page 57948, column 3, in the preamble under the paragraph heading “*E. Change in Ownership or Effective Control of the Corporation*”, first paragraph of the column, line 2, the language “§ 1.409A–3(g)(5)(vi) may be applied by” is corrected to read “§ 1.409A–3(g)(5)(vii) may be applied by”.

9. On page 57953, column 1, in the preamble under the “*B. Effective Dates—Calculation of Grandfathered Amount*”, first paragraph, line 7, the language, “set forth in Notice 2005–1, Q&A–16.” is corrected to read “set forth in Notice 2005–1, Q&A,–17.”.

10. On page 57953, column 2, in the preamble under the “*B. Effective Dates—Calculation of Grandfathered Amount*”, first full paragraph, line 3, the language, “contained in Notice 2005–1, Q&A–16” is corrected to read “contained in Notice 2005–1, Q&A,–17”.

#### § 1.409A–1 [Corrected]

11. On page 57959, column 2, § 1.409A–1(b)(4)(i), line 5, the language, “election under § 1.409A–2(a)(4) to” is corrected to read “election under § 1.409A–2(a)(3) to”.

12. On page 57961, column 1, § 1.409A–1(b)(5)(iii)(B), last line of the paragraph, the language, “service provider stock.” is corrected to read “service recipient stock.”.

13. On page 57961, column 2, § 1.409A–1(b)(5)(iii)(D)(1), line 25, the language, “constitute service provider stock with” is corrected to read

“constitute service recipient stock with”.

14. On page 57962, column 2, § 1.409A–1(b)(5)(iv)(B)(2)(iii), line 5, the language, “(b)(5)(B)(iv)(1) of this section, of an” is corrected to read “(b)(5)(iv)(B)(1) of this section, of an”.

15. On page 57962, column 2, § 1.409A–1(b)(5)(iv)(B)(2)(iii), lines 5 and 6 from the bottom of the paragraph, the language, “§ 1.409A–3(g)(5)(iv) or § 1.409A–3(g)(5)(vi) or make a public offering of” is corrected to read “§ 1.409A–3(g)(5)(v) or § 1.409A–3(g)(5)(vii) or make a public offering of”.

16. On page 57962, column 3, § 1.409A–1(b)(5)(iv)(B)(3), line 9 from the bottom of the paragraph, the language, “the service provider stock to which the” is corrected to read “the service recipient stock to which the”.

17. On page 57963, column 2, § 1.409A–1(b)(5)(v)(E), line 7, the language, “exercised is not a material modification” is corrected to read “exercised is not a modification”.

18. On page 57963, column 2, § 1.409A–1(b)(5)(v)(E), line 13, the language, “§ 1.409A–3(c). Additionally, no” is corrected to read “§ 1.409A–3(h). Additionally, no”.

19. On page 57964, column 1, § 1.409A–1(b)(v)(J)(6)(ii), line 14, the language, “purposes section 409A, including for” is corrected to read “purposes of section 409A, including for”.

20. On page 57964, column 2, § 1.409A–1(b)(v)(J)(8)(ii)(B), line 7, the language, “the compensation would have been” is corrected to read “and the compensation would have been”.

21. On page 57965, column 1, § 1.409A–1(b)(v)(9)(iii)(A)(1), line 3, the language, § 1.415–1(d)(2) for services provided to” is corrected to read “§ 1.415–2(d) for services provided to”.

22. On page 57965, column 1, § 1.409A–1(b)(v)(9)(iii)(A)(1), line 7, the language, “1402(a)(1) for services provided to the” is corrected to read “1402(a) for services provided to the”.

23. On page 57968, column 1, § 1.409A–1(f)(3)(i)(C), last line of the paragraph, the language, “sections 267(b)(1) and 707(b)(1).” is corrected to read “sections 267(b) and 707(b)(1).”.

24. On page 57969, column 1, § 1.409A–1(h)(2)(ii), line 2, the language, “paragraph (b)(2) of this section, the plan” is corrected to read “paragraph (h)(2)(i) of this section, the plan”.

25. On page 57969, column 1, § 1.409A–1(h)(2)(ii), lines 4 through 8, the language, “described in paragraph (a) of this section that no amounts deferred under the plan be paid or made available to the participant before the

participant has a separation from service with the” is corrected to read “described in § 1.409A–3(a)(1) that amounts deferred under the plan may be paid or made available to the participant upon a separation from service with the”.

#### § 1.409A–2 [Corrected]

26. On page 57971, column 3, § 1.409A–2(a)(9), line 3, the language, “1(b)(9)(i) due to an actual involuntary” is corrected to read “1(m) due to an actual involuntary”.

27. On page 57973, column 1, § 1.409A–2(b)(3), line 5, the language, “contained in § 1.409A–3(c), the” is corrected to read “contained in § 1.409A–3(h), the”.

#### § 1.409A–3 [Corrected]

28. On page 57975, column 3, § 1.409A–3(b), line 26, the language, “§ 1.409A–1(b)(4). An arrangement may” is corrected to read “§ 1.409A–2(b). An arrangement may”.

29. On page 57977, column 2, § 1.409A–3(g)(3)(i), line 12 from the top of the column, the language, “insurance, for example, not as a result” is corrected to read “insurance, for example, as a result”.

30. On page 57977, column 3, § 1.409A–3(g)(4)(i)(A), line 6, the language, “result in death or can be expect to last” is corrected to read “result in death or can be expected to last”.

31. On page 57981, column 1, § 1.409A–3(h)(4)(viii)(B), line 6, the language, “defined in § 1.409A–2(g)(4)(i). For” is corrected to read “defined in § 1.409A–3(g)(5)(i). For”.

**Guy R. Traynor,**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 235

RIN 0790–AH86

#### Sale of Rental of Sexually Explicit Material on DoD Property (DoD Instruction 4105.70)

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise DoD regulations to prohibit the sale or rental of sexually explicit material on