The Proposal

The FAA is proposing to amend 14 CFR part 71 to realign a segment of J–151. Currently, the segment of J–151 between the Farmington VORTAC and the Candu navigational fix has been found to be unusable for navigation due to frequency interference. The FAA has issued Flight Data Center Notices to Airmen advising users of this problem. To correct this problem, it is necessary to realign J–151 between the Farmington VORTAC and the Vulcan VORTAC as a direct route.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–151 [Revised]

From Cross City, FL; Vulcan, AL; Farmington, MO; St Louis, MO; Des Moines, IA; O'Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

Issued in Washington, DC, on March 15, 2000.

Steve Rohring,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–7191 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117162–99]

RIN 1545–AX59

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; amendment to notice of proposed rulemaking; and notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** on March 7, 1989 and amends proposed regulations under section 125. These proposed regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The proposed regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage, group-term life insurance coverage, dependent care assistance, and adoption assistance.

DATES: Written and electronic comments and requests for a public hearing must be received by June 21, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 am and 5 pm to: CC:DOM:CORP:R (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer or Christine L. Keller at (202) 622–6080; concerning submissions or to request a public hearing, LaNita Van Dyke at (202) 622–7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 125 [1] permits an employer to offer employees the choice between taxable income and certain nontaxable or ''qualified benefits'' [2] through a cafeteria plan, without the employees having to recognize the taxable income. In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[3] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[4] Specifically, §§ 1.125–1, Q&A–8 and 1.125–2, Q&A–

[1] Revenue Act of 1978, Public Law 95–600 (November 6, 1978): Sen. Rep. 95–1263, 95th Cong., 2d Sess., 74–78, 186–187 (October 1, 1978); H.R. Rep. No. 95–1445, 95th Cong. 2d Sess., 63–66 (August 4, 1978); H.R. Rep. No. 95–250, 96th Cong., 2d Sess., 206–207, 253–254 (October 15, 1978).

[2] ''Qualified benefits'' are generally any benefits excluded from income, including coverage under an employer-provided accident or health plan under sections 105 and 106; group-term life insurance under section 79; elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k); dependent care assistance under section 129; and adoption assistance under section 137. The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132. Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

[3] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[4] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), and FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

6(b), (c) and (d) permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[5] The 1997 regulations are being published as final regulations elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

A. Summary

The proposed regulations being published in this notice of proposed rulemaking were developed as part of an integrated package with the final regulations that are being published at the same time. These proposed regulations supplement the final regulations by permitting a mid-year cafeteria plan election change in connection with dependent care assistance and adoption assistance under change in status standards that are the same as the standards in the final regulations for accident or health plans and for group-term life insurance, and by adding change in status standards that are specific to dependent care and adoption assistance. These proposed regulations also refine and expand upon the approach adopted in the 1989 proposed regulations (at § 1.125–2, Q&A–6(b)) by providing that a cafeteria plan may permit employees to make mid-year election changes with respect to group-term life insurance, dependent care assistance, and adoption assistance as well as accident or health coverage, on account of changes in cost or coverage. This expansion of the cost or coverage rules would also allow employees to make election changes if, during a period of coverage, (1) a new benefit package option is offered, or a benefit package option is eliminated, under the plan or (2) a coverage change is made under a plan of the employer of an employee's spouse or dependent. These proposed regulations include a variety of examples illustrating how the rules apply in specific situations.

B. Change in Status

The proposed regulations published in this notice of proposed rulemaking complement the final regulations being published elsewhere in this issue of the **Federal Register** with respect to special enrollment rights and changes in status for accident or health coverage and group-term life insurance coverage. These proposed regulations take into account comments received on the 1997 temporary and proposed regulations, including comments suggesting the desirability of uniformity in the rules for different types of qualified benefits to the extent appropriate given the nature of the benefits.

In response to comments, the new proposed regulations address circumstances under which a cafeteria plan may permit an employee to change an election for dependent care assistance under section 129 and adoption assistance under section 137 during a plan year. The proposed change in status rules for dependent care assistance and adoption assistance parallel the change in status rules for accident or health coverage and group-term life insurance coverage contained in the final regulations, with some additional rules specific to dependent care and adoption assistance. For example, while a change in the number of dependents is a status change for other types of qualified benefits, a change in the number of qualifying individuals, as defined in section 21(b)(1), is a change in status for purposes of dependent care assistance. Likewise, these proposed regulations allow an additional change in status event for adoption assistance (the commencement or termination of an adoption proceeding). The consistency rule in the proposed regulations is the same as the consistency rule in the final regulations, with certain provisions that are specific to dependent care and adoption assistance changes.[6]

C. Change in Cost or Coverage

The new proposed regulations also address election changes to reflect significant cost and coverage changes for all types of qualified benefits provided under a cafeteria plan. The new proposed regulations refine and expand upon the approach taken in the 1989 proposed regulations at § 1.125–2, Q&A–6 with respect to changes in cost or coverage under the plan. For example, in response to comments, the new proposed regulations provide that if a plan adds a new benefit package option (such as a new HMO option), the cafeteria plan may permit affected participants to elect that option and make a corresponding election change with respect to other benefit package options during a period of coverage.

The new proposed regulations also generally extend the cost or coverage rules under § 1.125–2, Q&A–6(b) to permit election changes for self-insured accident or health plans, group-term life insurance, dependent care assistance and adoption assistance coverage under a cafeteria plan. Thus, for example, if the cost of a self-insured accident or health plan increases, a plan may automatically make a corresponding change in the salary reduction charge. In addition, the new proposed regulations treat a change of dependent care provider as similar to the addition of a new HMO option under an accident or health plan, with the result that a corresponding election change can be made when one dependent care provider is replaced by another. While the coverage change rules apply to dependent care regardless of whether the dependent care provider is related to the employee, the cost change rules do not apply to dependent care if the dependent care provider is a relative of the employee making the election.

Commentators on the 1997 temporary and proposed regulations also raised a concern that when the plan of the employer of a spouse conducts annual open enrollment for group health benefits beginning at a different time of the year than the annual open enrollment for group health benefits offered by the employee's employer, the employee is unnecessarily restricted from making election changes that correspond with elections made by the employee's spouse. These commentators suggested that if one spouse makes an election change during an open enrollment period, a corresponding change should be permitted for the other spouse. In response to these comments, the new proposed regulations provide that a cafeteria plan may permit an employee to make an election change, during a period of coverage, corresponding with an open enrollment period change made by a spouse or dependent when the plan of that individual's employer has a different period of coverage.

In addition, the new proposed regulations provide that a cafeteria plan may permit an employee to make an

[5] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of these temporary regulations (§ 1.125–4T) and proposed regulations (§ 1.125–4) so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

[6] Conforming changes have also been made to Q&A–8 of the 1984 proposed regulations under § 1.125–1.

election change in the event that a spouse or dependent makes an election change under a cafeteria plan (or qualified benefits plan) maintained by that individual's employer, provided that the spouse or dependent's election change satisfies the election change rules under the proposed regulation. For example, under this provision, if the plan of a spouse's employer adds a new HMO option to its group health plan, and the spouse elects to enroll the family in that new option, a cafeteria plan may permit the employee to drop family coverage. These new rules apply only if the change made by the employee is on account of and corresponds with the change made under the other employer's plan. This expansion of the existing cost or coverage change rules permits employees to make election changes to ensure consistent coverage of family members and eliminate duplicate coverage.

The cost or coverage rules in the new proposed regulations have not been extended to health flexible spending arrangements. This ensures that those arrangements will not permit election changes in a manner that is inconsistent with the requirement, under §§ 1.125–1, Q&A–17 and 1.125–2, Q&A–7 of the existing proposed regulations, that such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance.

Although the final regulations being published elsewhere in this issue of the **Federal Register** permit election changes in the event an individual becomes eligible (or loses eligibility) for Medicare or Medicaid, these proposed regulations do not address election changes to reflect an individual's eligibility for other government programs that pay for or subsidize health coverage.[7] For example, the new rules do not address the possibility that an employee's child may cease to be eligible for coverage under a state's children's health insurance program (CHIP) designed in accordance with Title XXI of the Social Security Act.[8] Comments are requested on whether eligibility or ineligibility for such a government program should be added to the types of events that allow a cafeteria plan election change (including any special administrative difficulties that employers might have in identifying this type of event) and, if so, the types of government programs that should be permitted to be taken into account.

D. Effective Date and Reliance

The new proposed regulations do not specify a proposed effective date. Any effective date will be prospective, and comments are requested on the extent of lead time necessary for employers to be able to implement the new proposed regulations after they are adopted as final regulations.

Until the effective date of further guidance, taxpayers may rely on the new proposed regulations. In addition, until the effective date of further guidance, taxpayers may continue to rely on the change in family status rules in the existing proposed regulations (at § 1.125–2, Q&A–6(c)) with respect to benefits other than accident and health coverage and group-term life insurance coverage, and on the cost or coverage change rules in the existing proposed regulations (at § 1.125–2, Q&A–6(b)) with respect to all types of qualified benefits.

Special Analyses

It has been determined that this notice of proposed rulemaking 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) do not apply to these regulations, and because the regulations do 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, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal authors of these proposed regulations are Janet A. Laufer and Christine L. Keller, 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.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, § 1.125 Q&A–6(c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

Amendments to Previously Proposed Rules

The proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460), and amended on November 7, 1997 (62 FR 60196), are amended as set forth below.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.125–1, as proposed to be added on May 7, 1984 (49 FR 19322), in Q&A–8, Q–8 is republished and A–8 is amended by adding two sentences at the end of the answer to read as follows:

§ 1.125–1 Questions and answers relating to cafeteria plans.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: * * * For benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage under the rules set forth in § 1.125–4 pertaining to permitted election changes. For additional rules governing benefit elections, see § 1.125–4.

* * * * *

Par. 3. In § 1.125–2, as proposed to be added on March 7, 1989 (54 FR 9500) and amended November 7, 1997 (62 FR

[7] The loss of coverage under a government program may give rise to a special enrollment right under section 9801(f) and, thus, the issue addressed here is relevant only in cases in which the special enrollment rules do not apply.

[8] Added to the Social Security Act by section 4901 of the Balanced Budget Act of 1997, Public Law 105–33 (August 5, 1997).

60197), in Q&A–6, Q–6 is republished and A–6 is amended by:

1. Adding a sentence at the end of paragraph (b)(2).

2. Revising the last sentence of paragraph (c).

3. Revising the last sentence of paragraph (d).

The additions and revisions read as follows:

§ 1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: * * *

(b) * * *

(2) * * * For additional rules governing cafeteria plan election changes in connection with a significant cost or coverage change, see § 1.125–4.

(c) *Certain changes in family status.* * * * For additional rules governing cafeteria plan election changes in connection with certain changes in status, see § 1.125–4.

(d) *Separation from service.* * * * For additional rules governing cafeteria plan election changes in connection with an employee's separation from service, see § 1.125–4.

* * * * *

Par. 4. § 1.125–4 is amended as follows:

1. Paragraph (c) is amended as follows:

a. Revising paragraph (c)(1)(iii).

b. Adding paragraph (c)(2)(vi).

c. Revising paragraph (c)(3)(ii).

d. Adding paragraphs (c)(4)*Example 3*(iii) and (c)(4)*Example 9.*

2. Revising paragraph (f).

3. Revising paragraph (g).

4. Revising paragraph (i)(3).

The additions and revisions read as follows:

§ 1.125–4 Permitted election changes.

* * * * *

(c) * * * (1) * * *

(iii) *Application to other qualified benefits.* This paragraph (c) applies to plans providing qualified benefits other than those listed in paragraph (c)(1)(ii) of this section.

(2) * * *

(vi) *Adoption assistance.* For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) * * *

(ii) *Application to other qualified benefits.* An election change satisfies the requirements of this paragraph (c)(3) with respect to other qualified benefits if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. An election change also satisfies the requirements of this paragraph (c)(3) if the election change is on account of and corresponds with a change in status that affects expenses described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance, or expenses described in section 137 (including qualified adoption expenses as defined in section 137(d)) with respect to adoption assistance.

* * * * *

(4) * * *

Example 3. * * *

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F's* employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *P*'s cafeteria plan.

* * * * *

Example 9. (i) Employee *A* has one child, *B.* Employee *A*'s employer, *X,* maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of ''qualifying individual'' under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects A's employment-related expenses as defined in section 21(b)(2). Therefore, A may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

* * * * *

(f) *Significant cost or coverage changes*—(1) *In general.* Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes*—(i) *Automatic changes.* If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost increases.* If the cost of a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases during a period of coverage, the cafeteria plan may permit employees either to make a corresponding prospective increase in their payments, or to revoke their elections and, in lieu thereof, to receive on a prospective basis coverage under another benefit package option providing similar coverage. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under an HMO option.

(iii) *Application to dependent care.* This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes*—(i) *Significant curtailment.* If the coverage under a plan is significantly curtailed or ceases during a period of coverage, the cafeteria plan may permit affected employees to revoke their elections under the plan. In that case, each affected employee may make a new election on a prospective basis for coverage under another benefit package option providing similar coverage. Coverage under an accident or health plan is significantly curtailed only if there is an overall reduction in coverage provided to participants under the plan so as to constitute reduced coverage to participants generally.

(ii) *Addition (or elimination) of benefit package option providing similar coverage.* If during a period of coverage a plan adds a new benefit package option or other coverage option (or eliminates an existing benefit package option or other coverage option) the cafeteria plan may permit affected employees to elect the newly-added option (or elect another option if an option has been eliminated) prospectively on a pre-tax basis and make corresponding election changes with respect to other benefit package options providing similar coverage.

(4) *Change in coverage of spouse or dependent under other employer's plan.* A cafeteria plan may permit an employee to make a prospective election change that is on account of and

corresponds with a change made under the plan of the spouse's, former spouse's or dependent's employer if—

(i) A cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer permits participants to make an election change that would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.

(5) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) A calendar year cafeteria plan is maintained pursuant to a collective bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit affected participants to make an election change to elect the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in copayments under the HMO option.

Example 2. (i) Employer *N* sponsors a group health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A*, is married to *B*. Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its group health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s group health plan.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001 if *B* actually elects no coverage under *O*'s group health plan for the plan year beginning on September 1, 2001.

Example 3. (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C*, elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D*, who is employed by Employer *Q*. *Q* does not maintain a cafeteria plan, but does maintain a group health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s group health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

Example 4. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply. While *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, *R*'s cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

Example 5. (i) Employee *A* is married to Employee *B* and they have one child, *C*. Employee *A*'s employer, *M*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because *A* has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Thus, *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

Example 6. (i) Employee *D* is married to Employee *E* and they have one child, *F*. Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

Example 7. (i) Employee *G* is married to Employee *H* and they have one child, *J*. Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z*, *G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

(g) *Special requirements relating to the Family and Medical Leave Act.* [Reserved]

* * * * *

(i) * * *

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a

dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–5818 Filed 3–22–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AA06

Public Use of NARA Facilities

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations for use of its facilities. This proposal entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. The regulation has been updated to include new rules for public use of the National Archives at College Park, MD, and procedures for using the Exhibition Hall of the National Archives Building in Washington, DC, for a private event. It also lowers the age at which an unaccompanied child can visit a NARA facility from 16 to 14 years old. This change conforms with an earlier revision of 36 CFR part 1254 that lowered the age at which an individual can conduct research in NARA facilities to 14 years old. This revised regulation will govern the public's activity while on NARA property; however, it does not contain rules for conducting research at NARA facilities. Those rules are found in 36 CFR part 1254.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to (301) 713–7270.

Comments on the information collections contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NARA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made and the proposed regulation has been written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

We are reorganizing Subpart A for clarity and making some policy changes in this subpart. Section 1280.12(a), which defines what property is under control of the Archivist of the United States, has been moved and redesignated as § 1280.2 in this proposed rule. We expanded this definition to include the National Archives at College Park and the Presidential Libraries. We want to clarify that the definition of NARA property applies to the entire regulation, and not just to the section on photography where it is currently located.

The provisions of the current § 1280.2 are moved to proposed § 1280.4, and we have lowered the age that an unaccompanied child may be admitted to a NARA facility to 14 years old. This change conforms with a May 1999 change to 36 CFR Part 1254, Researcher Registration and Research Room Procedures, that lowers the minimum age at which an individual may be granted full research privileges to 14 years old.

In the proposed § 1280.10 (currently § 1280.4), concerning vehicular and pedestrian traffic, we added a provision which states that NARA may deny any vehicle access to NARA property for public safety or security reasons. We specify in this section that NARA may tow, at the owner's expense, any vehicle that is illegally parked. We also added a new section, § 1280.12, which explains parking at NARA facilities. The National Archives Building has no onsite parking. The National Archives at College Park does have limited parking, as do most of the regional records services facilities. All of the Presidential libraries have onsite parking for researchers and museum visitors. We are also adding a new § 1280.14 that defines NARA's rules for use of the shuttle bus that travels between the National Archives Building in Washington, DC, and the National Archives at College Park. This shuttle service is intended for the use of NARA employees who are on official business. Other government employees and researchers may use the shuttle if space is available.

We are adding a new § 1280.24, which bans smoking inside all NARA facilities. You may smoke only in designated outdoor areas. This policy is based on Executive Order 13058 that prohibits, with limited exceptions, smoking of tobacco products in all Federal buildings.

The proposed Subpart B clarifies the rules for filming, videotaping, or taking photographs in NARA facilities. This new subpart is an expansion of the current §§ 1280.12 through 1280.18 and has been revised to include the National Archives at College Park and the Presidential Libraries. We have removed all references to the Pickett Street Annex that NARA no longer leases. We are rewriting this subpart primarily to clarify the differences between photographing or filming for personal use, and photographing or filming for news purposes. Filming, videotaping, and photographing on NARA property for commercial purposes continues to be prohibited. You do not need prior permission to film, photograph, or videotape inside or outside NARA facilities for personal use as long as you observe the rules in § 1280.46. When applying to film, photograph, or videotape for news purposes, the proposed § 1280.48(c) specifies that you must supply the name of the company you represent, the areas you wish to film, photograph, or videotape, and the nature of the project that the film, photographs, or videotape will be used for. The proposed § 1280.52(b) allows you, subject to the approval of the NARA Public Affairs Officer, to film, photograph, or videotape for news purposes in records storage (stack) areas containing unclassified records. This is not allowed under the current regulation.

The proposed Subpart C sets forth additional rules for using the National Archives Building in Washington, DC, and the National Archives at College Park, MD. The proposed §§ 1280.60 and 1280.66 will replace the current §§ 1280.10 and 1280.20 respectively. The proposed § 1280.64 designates the public and delivery entrances of the National Archives at College Park. The proposed § 1280.68 explains that the cafeteria at the National Archives at College Park is open to the general public.

The proposed Subpart D explains how an organization or other Federal agency can request to use NARA's Washington, DC, area facilities for events. This subpart covers §§ 1280.22 through 1280.28 in the current Subpart B. We revised this subpart to include