

petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

#### VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing and amended filing notice for CAP 8C0262 (63 FR 51359 and 64 FR 33097). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

#### VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VIII. Objections

This rule is effective as shown in the **DATES** section of this document, except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday

through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

#### IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Jensen, Chemistry Review Team, Division of Product Manufacture and Use, to Orstan, Division of Petition Control, January 22, 1999.

2. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Orstan, Regulatory Group II, Division of Petition Review, April 16, 2003.

3. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to DeLeo, Regulatory Group II, Division of Petition Review, March 1, 2005.

4. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Orstan, Regulatory Group II, Division of Petition Review, January 30, 2003.

5. Memorandum from Park, Toxicology Review Group I, Division of Petition Review, to DeLeo, Division of Petition Review, December 14, 2005.

#### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (the act) and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

#### PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.350 is added to subpart A to read as follows:

#### § 73.350 Mica-based pearlescent pigments.

(a) *Identity.* (1) The color additive is formed by depositing titanium salts onto mica, followed by heating to produce titanium dioxide on mica. Mica used to manufacture the color additive shall conform in identity to the requirements of § 73.1496(a)(1).

(2) Color additive mixtures for food use made with mica-based pearlescent pigments may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring food.

(b) *Specifications.* Mica-based pearlescent pigments shall conform to the following specifications and shall be

free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Lead (as Pb), not more than 4 parts per million (ppm).

(2) Arsenic (as As), not more than 3 ppm.

(3) Mercury (as Hg), not more than 1 ppm.

(c) *Uses and restrictions.* (1) The substance listed in paragraph (a) of this section may be safely used as a color additive in amounts up to 1.25 percent, by weight, in the following foods:

(i) Cereals.

(ii) Confections and frostings.

(iii) Gelatin desserts.

(iv) Hard and soft candies (including lozenges).

(v) Nutritional supplement tablets and gelatin capsules.

(vi) Chewing gum.

(2) The color additive may not be used to color foods for which standards of identity have been issued under section 401 of the act, unless the use of the added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and of any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: May 25, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-8575 Filed 6-1-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

#### 29 CFR Part 458

#### RIN 1215-AB48

### Standards of Conduct for Federal Sector Labor Organizations

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor (Department) proposed to revise the regulations applicable to Federal sector labor organizations subject to the Civil Service Reform Act of 1978 (CSRA), the

Foreign Service Act of 1980 (FSA), and the Congressional Accountability Act of 1995 (CAA) (referred to collectively as "these Acts"). This document sets forth the Department's review of comments submitted by the public on the proposal, the Department's response to those comments, and the changes from the proposal that are embodied in a final rule.

The Department will require each labor organization subject to these Acts to periodically inform their members of their rights as union members as set forth in the standards of conduct provisions of these Acts and their implementing regulations.<sup>1</sup> Labor organizations subject to this rule must provide written notice to existing members within 90 days after the effective date of the regulation and to new members within 90 days of their joining the organization. Such notification must also be given to each member at three-year intervals. Notification may be made by hand delivery, regular mail, electronic mail (e-mail), or a combination of these methods as long as the method selected is reasonably calculated to reach all members. A labor organization is permitted, but not required, to include such notice with the organization's notice of election of officers if such notice is mailed to members at least every three years. If a labor organization has a Web site, the site must contain a link to the CSRA Union Member Rights, or, alternatively, provide the organization's own notice as long as the notice accurately states all of the CSRA standards of conduct provisions. OLMS will use the existing administrative mechanism in the standards of conduct regulations for resolving complaints related to this rule. Where OLMS determines after investigation that a violation has occurred and has not been remedied, OLMS will institute enforcement proceedings against the labor organization before the Department's Office of Administrative Law Judges.

**DATES:** *Effective Date:* This rule will be effective on July 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kay Oshel, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5605, Washington, DC 20210, *olms-public@dol.gov*, (202) 693-1233 (this is

not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 3, 2004, the Department issued a notice of proposed rulemaking (69 FR 64226) proposing revisions of the regulations applicable to Federal sector labor organizations subject to the Civil Service Reform Act of 1978, 5 U.S.C. 7120 (CSRA), the Foreign Service Act of 1980, 22 U.S.C. 4117(d) (FSA), and the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1) (CAA). As the notice explained, the purpose of the revision is to require labor organizations subject to these Acts to periodically inform members of their democratic rights as set forth in the standards of conduct provisions of the Acts and their implementing regulations. These rights include, among others, the right to participate in union affairs, freedom of speech and assembly, and the right to nominate candidates for office and run for office. A summary description of these rights and other pertinent standards of conduct provisions can be found in the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act, which is appended to this Final Rule.

Before issuing this proposal, Department officials met with representatives of the regulated community, including unions and organizations advocating greater democracy within labor organizations, to hear their views on the need for the proposed rule and the likely impact of changes that might be proposed. The Department's proposal, developed with these discussions in mind, requested comments on numerous specific issues in order to obtain the views of the parties affected by the proposal and to fully inform the Department in developing the final rule.

As noted in the Department's proposal, this rule amends the regulations for unions subject to the standards of conduct provisions of the CSRA, FSA and CAA to require such unions to inform members of the standards of conduct provisions found at 29 CFR parts 457-459. The CSRA standards of conduct regulations make certain provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401 *et seq.* applicable to federal sector labor organizations. The standards incorporate portions of the reporting provisions of the LMRDA's Title II (compare 29 U.S.C. 431 with 29 CFR 458.3), the trusteeship provisions of

Title III (compare 29 U.S.C. 461-466 with 29 CFR 458.26-28), the union democracy provisions of Title IV (compare 29 U.S.C. 481 with 29 CFR 458.29), and the fiduciary obligations of Title V (compare 29 U.S.C. 501(a) with 29 CFR 458.31), among others.

Most pertinent here, the standards of conduct regulations incorporate Title I of the LMRDA (Bill of Rights of Members of Labor Organizations) virtually verbatim. See 29 CFR 458.2. Union member rights protected by Title I of the LMRDA include the right to:

- Nominate candidates for union office;
  - Vote in elections or referenda;
  - Attend membership meetings and vote upon the business of union meetings;
  - Meet and assemble freely with other members, and express views, arguments and opinions;
  - Participate in setting rates of dues, fees, and assessments;
  - File a lawsuit;
  - Receive notice and a fair hearing before being disciplined; and
  - Inspect or obtain copies of collective bargaining agreements between an agency-employer and the member's union (for members and other employees affected by the agreement).
- 29 U.S.C. 411-415. The standards of conduct regulations do not, however, incorporate the important protection found in section 105 of the LMRDA. Compare 29 U.S.C. 411-415 with 29 CFR 458.2. This provision states that "every labor organization shall inform its members concerning the provisions of this Act." 29 U.S.C. 415. The Department's proposal would revise the standards of conduct regulations to correct this omission.

When the comment period closed on January 3, 2005, OLMS had received over 750 comments, including 24 detailed, substantive comments from labor organizations, individual union officials, public interest and trade groups, and a Member of Congress, and over 700 copies of a form letter supporting the proposed rule. All the comments have been carefully reviewed and considered. The Department's analysis of the comments follows.

**II. Comments on the Proposal and Responses to the Comments**

*A. General Comments*

In addition to many specific comments that are discussed in the sections that follow, many of which were from unions in opposition to the proposed regulation, the Department also received over 700 identical comments from individuals in support

<sup>1</sup> To avoid unnecessary repetition, this final rule will refer to the standards of conduct provisions of the CSRA, the FSA, and the CAA and the Department's regulations implementing these provisions as the "CSRA standards of conduct."

of the Department's proposed reform, stating: "[t]his requirement is sorely needed to prevent federal employee unions from becoming personal fiefdoms in which a few powerful union officials control the organization \* \* \* [i]nforming union members of their rights is an essential part of strengthening union democracy and protecting the federal civil service from corrupt union officials." Although the value to the Department of these comments was diminished by the individuals' failure to articulate whether they are union members or federal employees, the comments do show strong support among numerous individuals for the proposed reform.

### *B. The Secretary's Statutory and Regulatory Authority*

Under the CSRA, a Federal agency "shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles." 5 U.S.C. 7120(a). To avoid having to prove that it is free from corrupt influences, a public sector union must adopt governing documents that guarantee "democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the rights of individual members to participate in the affairs of the organization, and to receive fair process in disciplinary proceedings." *Id.* The provisions must include the exclusion from union office individuals "identified with corrupt influences," the prohibition of financial conflicts of interests on the part of union officers and agents, and the maintenance of fiscal integrity in the conduct of the affairs of the organization. *Id.* A union seeking to be the bargaining representatives of Federal employees must file financial reports with the Department, provide for bonding of union officials and employees, and adhere to trusteeship and election standards. 5 U.S.C. 7120(c). The Secretary implements these provisions through a grant rulemaking authority that authorizes regulations as are "necessary to carry out the purposes" section 7120. These regulations are to "conform generally to the principles applied to labor organizations in the private sector." 5 U.S.C. 7120(d). A second grant of rulemaking authority is found in section 7134, which authorizes rules and regulations to carry out the provisions of section 7120 just discussed. 5 U.S.C. 7134. The Standard of Conduct regulations promulgated under these grants are found in 5 CFR parts 457-

459. A summary description of their provisions can be found in the Department of Labor publication *Union Member Rights and Officer Responsibilities* under the Civil Service Reform Act, which is appended to this Final Rule. The Final Rule adds another provision to these regulations requiring federal sector unions to provide notice to their member of the existing Standards of Conduct provisions.

The International Association of Machinists (IAM) challenged the Secretary's authority to issue the proposed rule, asserting that section 105 requires notice of rights that are held only by private sector union members and its application to federal sector unions therefore falls outside of the Secretary's rulemaking authority.<sup>2</sup> Specifically, the IAM argues that the CSRA does not grant public sector union members individual rights in the same manner as the LMRDA, and there are, thus, no rights of which union members can be notified. In support of its position, the IAM asserts:

[T]he first sentence of Section 7120(a) states a general requirement that Federal agencies shall only accord recognition to Unions that are free from corrupt influences. The second sentence provides that unions do not have to prove freedom from corrupt influences if their governing documents incorporate the standards set out in subsections (a)(1) through (a)(4). Thus, section 7120(a) effectively requires Federal-sector Unions to build the enumerated LMRDA-type rights into their constitutions, bylaws, and governing policies.

From the premise that a Federal employee's rights derive solely from the union's governing documents, the IAM concludes that public sector union members have no "free standing rights under Section 7120" and, therefore, "Section 105's purpose of alerting Union members to such external rights is simply absent." The Department's

<sup>2</sup> The legal authority for this notice of proposed rulemaking is the standards of conduct provisions of the CSRA, 29 U.S.C. 7120(d), 7134, and the FSA, 22 U.S.C. 4117. These provisions expressly authorize the Assistant Secretary of Labor for Labor Management Relations to issue regulations implementing standards of conduct that conform generally to the principles applicable to labor organizations in the private sector. This position no longer exists and through a series of Secretary's Orders, most recently embodied in Order 4-2001, which was issued May 24, 2001, and published in the *Federal Register* on May 31, 2001 (66 FR 29656), the Assistant Secretary for Employment Standards has the authority and responsibility to carry out the standards, programs and activities under the CSRA, FSA and CAA. In addition, under the CAA, the Office of Compliance, U.S. Congress, has issued regulations, expressly approved by the House and Senate, providing that the Secretary is responsible for issuing decisions and orders on standards of conduct matters. See 142 Cong. Rec. S12062-01, S12074 (October 1, 1996); 142 Cong. Rec. H10369-06, 10382 (September 12, 1996).

proposal is, therefore, "ill-conceived" and "lack[s] statutory authority." The National Federation of Federal Employees (NFFE), an affiliate of IAM, advances IAM's arguments in its comments.

The IAM's argument that Federal sector union members possess only the rights embodied in the unions' governance documents is unpersuasive. Its related argument that section 105 exists only to provide notice of external, "free-standing" rights also is unconvincing. Contrary to the IAM's suggestion, section 7120 provides, by force of law, that unions representing Federal employees ensure:

The maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the rights of individual members to participate in the affairs of the organization, and to receive fair process in disciplinary proceedings.

5 U.S.C. 7120(a)(1). Congress chose to ensure such "rights of individual members" by encouraging unions to adopt these protections in their constitution rather than by direct regulation of the unions. But the result is precisely the same: every recognized public sector union member enjoys these protections by statute.

In addition, section 7120 operates directly to regulate unions in a manner that preserves important union member rights. "A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports \* \* \*, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards." 5 U.S.C. 7120(c). By direct operation of law, therefore, labor unions representing federal employees must comply with stringent standards concerning full and accurate financial disclosure, responsible use of trusteeship authority, and fair and democratic elections. See 29 CFR 458.3 (reporting requirements), 29 CFR 458.26 (purposes for which a trusteeship may be established), and 29 CFR 458.29 (election of officers). These requirements by necessity vest union members with individual rights. For example, a union's duty to hold a fair election necessarily encompasses a union member's right to speak freely, express views, and support the candidate of his or her choice. If the election did not encompass these rights, the union member may file a complaint that, if validated by an investigation, could result in a new election, supervised by the Department of Labor. As a final note, accepting the argument

that federal sector union members have no free-standing rights would require the Department to consider invalid its own regulation, 29 CFR 458.2, which vests Federal sector union members with the same "Bill of Rights" afforded to private sector union members by the LMRDA. The Department declines to do so.

Even if it were demonstrated that the CSRA does not provide Federal sector union members "individual" or "free-standing rights," the Department would still reject IAM's argument because it is erroneously premised on the belief that section 105 requires unions to notify their members only of individual rights. On the contrary, section 105 provides that "every labor organization shall inform its members concerning the provisions of this Act." 29 U.S.C. 415. The language does not limit notice only to "individual rights" but is much more encompassing. This provision of the LMRDA includes, in addition to rights that IAM would consider free-standing (primarily relating to election and associational protections), numerous other substantive and procedural requirements and prohibitions. Thus, even if IAM were right that the CSRA provides union members with no free-standing rights, this would not affect the Secretary's statutory authority to require public sector unions to provide notice of the relevant provisions of the CSRA.

The Department has ample statutory authority to require unions subject to the CSRA standards of conduct to notify their members of these provisions. By including fundamental protections within their governing documents, unions seeking to become a bargaining representative of Federal employees satisfy their obligation to demonstrate their freedom from corrupt influences. Despite IAM's suggestion to the contrary, it does not follow that Congress, in establishing this statutory framework, intended to deny the Secretary the authority to further regulate union governance. Indeed, the plain language of section 7120(d) demonstrates just the opposite. Section 7120(d) reads: "The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector." 5 U.S.C. 7120(d). Similarly, the Assistant Secretary is required by the CSRA to "prescribe rules and regulations to carry out the provisions of" Chapter 71 (Labor-Management Relations) of Title 5 that are administered by her. 5 U.S.C. 7134. As the legislative history indicates, the rulemaking authority was meant to

enable the Assistant Secretary to "effectuate" the statute, 5 U.S.C. 7120. See S. Rep. 95-969, 107-108, 1978 U.S.C.A.N. 2723, 2829-30. The notion that sections 7120(a)(1)-(4) reflect the sole obligations of unions covered by the CSRA would deny effect to section 7120(d), among other subsections, and ignore the interpretative maxim that a statute should not be construed in a way that renders a provision superfluous. See, e.g., *United States v. Menasche*, 348 U.S. 528, 538 (1955).

A rule that requires unions to provide notice of the provisions of the CSRA is, to paraphrase the statute, necessary to fully realize the purposes of the CSRA and conforms generally to the principles applicable to private sector unions. 5 U.S.C. 7120(d). Notice is necessary because union member action is often required to ensure that unions comply with the provisions of the CSRA. A botched or stolen election cannot be set aside and rerun by the Department until a union member files a complaint. 29 CFR 458.29, 458.65. A union member who believes that his or her local union has been placed in trusteeship for a prohibited reason may file a complaint with OLMS, which, if well-founded, will result in an enforcement action to lift the trusteeship. 29 CFR 458.26-458.28, 458.53, 458.66(a). The financial reporting provisions are policed in part by union members who may, under certain circumstances, examine the union's books to verify the union's financial reports. 29 CFR 458.3; 29 CFR 403.8(a). The comments indicate that some unions do not adequately provide notice of the provisions of the CSRA to their members and that members are not versed in these provisions. Union members who are not aware of these laws will not likely take the steps needed to ensure that unions comply with these laws.

The rule is also consistent with private sector principles. Private sector unions have, since 1959, been required by statute to provide their members with notice of the law applicable to them. Section 105 of the LMRDA requires every covered union "to inform its members concerning the provisions of the Act." 29 U.S.C. 415. It is evident from this section that a rule requiring unions subject to the CSRA standards of conduct to inform members of their rights as union members and the responsibilities of their union officers "conforms generally to principles applied to labor organizations in the private sector."

In its comments, the International Federation of Professional and Technical Engineers (IFPTE) stated that the NPRM fails to explain the absence

of a provision in the CSRA comparable to section 105 of the LMRDA. IFPTE implies that this omission evidences an intention to relieve federal sector unions of any duty to notify their members of the provisions of the CSRA. The Department disagrees. IFPTE overlooks the state of the law pertaining to union regulation at the time the CSRA was enacted. In 1959, Congress enacted the LMRDA, complete with multiple titles imposing numerous prohibitions and requirements on labor unions and other entities. Public Law 86-257, September 14, 1959, 73 Stat. 519-546. By the mid-1960s, the Department had promulgated detailed regulations implementing and interpreting the LMRDA. See generally 29 CFR Parts 401-453. Congress did not, and did not need to, codify in the CSRA detailed provisions already established in the LMRDA for private sector unions. Instead, Congress chose to enact broad standards, provide the Assistant Secretary with rulemaking authority, and instruct the Assistant Secretary to prescribe necessary regulations that conform generally to the principles applied to private sector labor unions. 29 U.S.C. 7120. Thus, the absence of any particular provision in the CSRA comparable to section 105 in the LMRDA does not mean that Congress did not intend the notification requirement to apply to unions covered by the CSRA.

IAM and NFFE also argued that the proposed rule "upset[s] the balance of rights, duties and responsibilities that Congress enacted in the CSRA" by imposing a Federal obligation to highlight some CSRA rights over others. As discussed above, the notification required under the rule is within the authority provided the Department to effectuate the CSRA's standards of conduct. The Department acknowledges that the CSRA affords unions, their members, and Federal agencies important rights and obligations not addressed by the rule; however, the Department does not have express authority to require unions to apprise members of all their rights under the CSRA, but only those rights specifically under the authority of the Assistant Secretary, i.e., the standards of conduct for labor organizations. See 5 U.S.C. 7120(d) (Assistant Secretary has authority to carry out purposes of section 7120 by rules that conform generally to private sector principles); 5 U.S.C. 7134 (Assistant Secretary has authority to issue rules to carry out the applicable provisions of Chapter 71 (Labor-Management Relations) of Title 5). Furthermore, the Department rejects the notion that informing members

about their rights as union members somehow diminishes the other rights and obligations imposed on unions, union members, and agency management under the CSRA.

The IFPTE notes that the Department proposes to prescribe the content of the notice and the frequency and method of its distribution, thus imposing a greater burden on Federal unions than private unions. The IFPTE asserts that the Department “offers no factual basis for the imposition of these unique and burdensome requirements upon Federal sector unions.” The Department disagrees that the final rule lacks factual or legal support. The comments provide factual support for the findings supporting the final rule, as does the common sense proposition that increased notice leads to increased awareness. The particular requirements of the rule are discussed below, along with the comments and reasoning that support the Department’s decision. In addition, the final rule also has ample legal justification. In *Thomas v. International Ass’n of Machinists*, 201 F.3d 517 (4th Cir. 2000), a labor organization took the position that a notice it provided to its members forty years ago, shortly after the passage of the LMRDA, satisfied its section 105 notice obligations. The Court of Appeals rejected this position, stating that the democratic principles in the statute “are meaningless \* \* \* if members do not know of their existence [because] if a member does not know of his rights, he cannot exercise them.” *Machinists*, 201 F.3d at 520. As stated in the Department’s proposal, at 69 FR 64227, the reasoning in *Machinists* also applies to unions governed by the CSRA. Furnishing a notice of the CSRA standards of conduct provisions to union members furthers the fundamental policies of Federal labor law. Union members aware of these provisions are more likely to monitor the conduct of their union and its officers as it affects their rights and interests as members; such information also equips them to help remedy any breach of the union’s obligations. Union members who are not informed or aware of their rights are less able and less likely to take such action.

The Department acknowledges that the final rule imposes on Federal sector unions more precise requirements concerning the timing and content of the notice than have been expressly set forth in the law governing private sector labor organizations. The Department believes that requiring unions of Federal employees to notify their members of the provisions of the CSRA is squarely within the rulemaking authority the

Assistant Secretary has been granted, as discussed immediately above. The Department has also concluded that providing precise guidelines on the particulars of the notice merely effectuates the notice requirement and constitutes a reasonable administrative construction of the requirement. Clear instructions provide detail that will assist unions in complying with the law. The Department rejects any implication that the final rule is invalid because no court has heretofore imposed comparable terms on private sector unions. The relevant statute requires that CSRA regulations merely “conform generally to the principles applied to labor organizations in the private sectors,” and nowhere requires that the regulations adhere precisely in every particular to each articulation of, or omission in, private sector requirements. See 29 U.S.C. 7120(d).

### C. The Need for Notice to Members

The NPRM asked whether union members already receive adequate notice of their rights as union members. The Department received relatively few comments from unions on whether members already receive adequate notice of their rights. The IFPTE stated that it “fully supports the principle that it is important to educate union members about their statutory rights, as employees, citizens and union members, and devotes appropriate resources to educate members about all these issues, including their rights and obligations as union members.” The IFPTE did not, however, describe the extent of the “resources” it devotes to this effort, the content of the information it provides to its members, or the frequency with which it provides this notice. NFFE asserted that “most unions” give new members “membership information” and that “information is consistently and continuously posted on union websites.” NFFE did not, however, describe the content of the information it or other unions provide their members, or the frequency with which this information is provided. A letter from the IAM, provided as an attachment to NFFE’s comments, asserted that it takes the following steps: “[W]e now supply DOL’s own summary of the LMRDA to each new member, publish that summary in issues of our magazine, and carry it at all times on our website (clearly accessed from our home page).” The Department notes, however, that IAM may not be representative of other unions in that its commendable practices stemmed from a lawsuit against it by one of its members.

NFFE and the IFPTE asserted that members already have adequate notice of their rights. Neither of these unions, however, submitted copies of any information provided to their members, nor did they suggest that any such information is similar to, or as comprehensive as that contained in, the CSRA Union Member Rights notice. Other than IAM, no commenter included a copy of, quotation from, or link to, any statement of members’ rights on a labor organization’s Web site (or other union resource).

On the other hand, the National Right to Work Legal Defense Foundation (NRTWF) stated that “the basic provisions of the NPRM are essential.” The NRTWF asserted that “at least one union believes its legal obligation was satisfied with notices issued to union members two generations ago.” The Association for Union Democracy (AUD) argued that the proposed rule does not go far enough and that there should be a rule mandating inclusion of a rights notice in union constitutions. AUD also supported giving full written notice to new union members. One union official supported the regulation because “members are not informed of their rights.” Congressman Sam Johnson, Chairman of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the United States House of Representatives (Congressman Johnson), stated that “too many of today’s union members are wholly unaware of these rights, as too many unions have failed to provide their members with the notice of their rights as contemplated in section 105 of the LMRDA.” As noted, the Department also received 700 form comments, stating that the notice is “sorely needed.”

Many individuals and institutional commenters claim that new members do not receive adequate notice. A union officer wrote that he had “held an office in a local union for over 25 years, [and] not once during my tenure has my organization provided notice or training concerning my rights.” A union member commented that members are “never” apprised of their rights as union members. The Americans for Tax Reform wrote that “[r]eminding ordinary union members that they own the union they pay dues to is a great step for worker rights and democracy.” The AUD stated that by enacting the proposed regulation “the DOL will be ensuring that federal sector union members receive the same information about their rights as private sector union members are already entitled to under [section] 105 of the [LMRDA].”

After considering all the comments, the Department has concluded that each labor organization subject to the CSRA must inform its members of the relevant provisions of the CSRA. In the Department's view, there is no persuasive argument that members of federal sector unions are less deserving of such information than members of unions solely representing private sector employees. The comments indicate that unions subject to the proposed rule, as a general matter, do not already provide such information of their own volition to their members. The comments also indicate that union members, as a general matter, are not already aware of the provisions of the CSRA. The Department has concluded that notice is necessary to ensure that Federal sector union members are provided a basic understanding of their rights as union members and the responsibilities of their officers.

#### D. Content of the Notice

The NPRM asked whether the CSRA Member Rights publication clearly and accurately states all union member democratic rights. The NPRM also asked what specific changes to the language would improve the accuracy or clarity of the notice.

The Department received comments recommending specific changes to the document, including the following: the Department should delete the listing of union officer responsibilities, delete the statement concerning trusteeships, and delete the statement requiring unions to provide copies of collective bargaining agreements. Other comments suggested that the Department should add statements regarding a union's duty of fair representation, an individual's right to join or not join a union, the asserted right to "limit membership" to financial core matters, the need to exhaust internal union proceedings in order to obtain redress for a violation of a member's rights, and the right to accurate information about union finances. We discuss each of these points in turn.

NFFE stated union officer responsibilities should not be included because these duties concern internal union policy, not "members' rights." The Department disagrees. Members' rights include the obligations owed members by the officers of their union. Even if the term "members' rights" could be construed in the narrow sense suggested by NFFE, the notification is designed to apprise members about all of the relevant CSRA standards of conduct, rather than simply membership rights. In the Department's view, "Union Member Rights and

Officer Responsibilities" better conveys the purpose of the notification than a title in which "standards of conduct" is the focal point, as a commenter urged, notwithstanding the longstanding use of the term in Federal sector labor relations.

NFFE further stated that "the requirement to provide copies of collective bargaining agreements to dues paying and non-dues paying members is not a legal requirement under 5 U.S.C., Chapter 71." The obligation that a union provide copies of the collective bargaining agreement on request to any member of the bargaining unit has long been established by this Department's regulations. See 29 CFR 458.3. This rule was adopted in 1980, as part of an overall effort to update the Department's responsibilities following the CSRA's 1978 enactment. The obligation existed under regulations promulgated under E.O. 11491, as amended, the antecedent authority governing labor-management relations in the Federal service. See 29 CFR 204.2(d) (1979) (indicating source as 40 FR 19992 (1975)). Moreover, this requirement is the analog to the LMRDA section 104 obligation of unions "to forward a copy of each collective bargaining agreement \* \* \* to any employee who requests such a copy \* \* \*" 29 U.S.C. 415, 414. For these reasons, the Department has determined that the inclusion of this statement in the members' rights notification is appropriate.

NFFE stated that the notice should include a statement concerning an employee's right to join a union. Three organizations (NRTWF, Evergreen Freedom Foundation (EFF), and Stop Union Political Abuse (SUPA)) recommended that the notice contain a statement concerning an employee's right not to join a union. Without regard to any possible merit of including such statements in the notice, the right to join or not join a Federal sector union is chiefly enforced by the Federal Labor Relations Authority (FLRA) and is outside the jurisdiction of this Department.

NFFE contended that the Department lacked the authority to state that "[a] union may not be placed in trusteeship by a parent body except for those reasons stated in the standards of conduct regulations." NFFE claimed that this statement is inconsistent with three Federal courts of appeals decisions (*Reed v. Sturdivant*, 176 F. 3d 1051 (8th Cir. 1999); *Smith v. Office & Professional Employees International Union*, 821 F.2d 355 (6th Cir. 1987); *New Jersey County & Mun. Council #61 v. American Federation of State, County and Municipal Employees*, 478 F.2d

1156 (3rd Cir. 1973), *cert. denied*, 414 U.S. 975 (1973)). The Department believes that the statement in question accurately summarizes the restrictions on trusteeships under the CSRA, as articulated in the Department's existing regulations. See 29 CFR 458.26. The substantive requirements under the CSRA conform generally to the LMRDA. Only the enforcement mechanisms are different. As stated in *Reed v. Sturdivant*, "After two circuits construed Title III [of the LMRDA] as not applying to trusteeships imposed upon local unions of federal employees, Congress responded by enacting the CSRA, which mandates the same substantive standards but is enforced by exclusively administrative remedies." \* \* \* 176 F.3d at 1054. For these reasons, the Department has decided to retain unchanged the statement that "[a] union may not be placed in trusteeship by a parent body except for those reasons specified in the standards of conduct regulations."

The NRTWF and SUPA requested that the Department include in the required notice that the union has a duty to fairly represent all employees in the bargaining unit and to charge dues only for "core" union purposes, i.e., for matters such as collective bargaining, contract administration, and the adjustment of grievances. The duty of fair representation is not a provision within the authority of the Department. Although the duty is set forth in the CSRA, this duty arises independent of an employee's membership in a union and the duty is enforced by the FLRA, not this Department. For these reasons, the Department believes it would be inappropriate to include such statements in the required notice. Similarly, the Department believes it would be inappropriate to include a statement concerning "core" union responsibilities. The Department is not persuaded that the concept of financial core membership is applicable to Federal sector union members because a union shop is not permitted under the CSRA and, in any event, any claimed violation would fall within the authority of the FLRA, not this Department.

For similar reasons, the Department rejects SUPA's related recommendation that the notice include the statement that members possess the "right to clear, concise, and accurate financial information \* \* \*, especially for \* \* \* expenditures on "non-core" activities." The Department believes that the CSRA Union Member Rights accurately identifies a union's obligation to provide financial information to its members as relevant to the CSRA provisions for which the Assistant

Secretary has responsibility. And, even assuming that there is a relevant distinction between charges for “core” and “non-core” activities in the Federal sector, the Department has not been persuaded that it possesses the authority to require unions subject to this rule to provide any accounting to members other than those that conform generally to the principles already prescribed by Title II of the LMRDA.

The NRTWF also suggested that the notice should be denominated the “Rights of Represented Employees and Union Officer Responsibilities under the Civil Service Reform Act” because non-union member bargaining unit employees have the same rights to representation as members. The NRTWF would require unions to send the notices to all employees in the bargaining unit it represents, members and nonmembers alike. Protecting representation rights, however, is not one of the purposes of section 7120 and not one of the provisions of Chapter 71 that is applicable to the Assistant Secretary. 5 U.S.C. 7120(c), 7134. Thus, there is no express rulemaking authority to issue such a regulation. The Department is not persuaded that unions should be required either to include in a notice to their own members a statement that primarily concerns the rights of nonmembers or that the union should be required to bear the expense of providing information to nonmembers (even assuming that the union had addresses or an alternative means to mail notice to them).

The EFF recommended that unions should be required to use specific language, developed by the Department, in order to ensure that members are given proper notice of their rights. Another commenter, an officer of a Federal union, objected, “If you allow the unions to abbreviate the statement, some would also abbreviate the rights.” On the other hand, NTEU, and other unions, urged the Department to permit unions to devise their own language in order to correct perceived omissions in the notice or provide information tailored to the unique needs of each union and its membership. After considering the comments, the Department concludes that it is appropriate to provide unions the alternative opportunity to devise their own notice. Although use of the Department-prepared notice ensures uniformity by providing a minimum compliance standard, uniformity is also its weakness. Such a notice must of necessity be generic—without any tie to a union’s particular internal practices or procedures. By developing its own

notice, a union may choose to apprise members of their specific rights under the union’s governing documents, and the duties owed by officers and the members to the union and each other at the same time it informs members of the provisions of the CSRA. Given the Department’s authority to undertake its own investigation of union compliance with the notification requirement and its ability to prosecute violations, the Department believes that it can oversee union practices in devising language and, if proven necessary, quickly undertake corrective action without any significant loss of information to members. At the same time, the Department determined that it was appropriate to make explicit that the standards to be identified in a union-developed notice include, at a minimum, each of the standards listed in the OLMS publication appended to this document. To accomplish this result, the text of the final rule now clarifies that the union-prepared notice must accurately state the CSRA provisions as they appear in CSRA Union Member Rights.

The NRTWF stated that the notice should include statements that union members have the right to resign their membership and to revoke their dues authorization. Although the NRTWF correctly states that union members have these rights, the purpose of the notice is to inform members generally of the standards of conduct provisions in the CSRA and the Department’s regulations, not to provide an exhaustive list of union member rights, as recognized by the courts or other authorities. Similarly, as discussed above, the Department was not expressly authorized by Congress to prescribe rules that would more generally require unions to apprise members of their collective bargaining and other rights and obligations under the CSRA.

NFFE and NTEU recommended that the notice contain a statement that “employees should exhaust internal union administrative procedures prior to seeking department relief regarding the election of officers.” In crafting the proposed rule, the Department considered the inclusion of a statement specifically alerting union members that they may be required to “exhaust” internal procedures before obtaining relief under the standards of conduct provisions. The Department concluded that a relatively complete yet succinct statement of the exhaustion principle could not be accomplished through a summary notice and that the very term “exhaustion” might be confusing to some individuals. For these reasons, the

Department instead included the following statement in the notice. “If you need additional information \* \* \* please contact OLMS \* \* \*. You should also refer to 29 CFR 457.1–459.5, and your union’s constitution and bylaws for information on union procedures, timelines, and remedies.” The Department’s view remains that this approach is preferable to an attempt to include even a truncated statement of the exhaustion principle in the notice. Furthermore, as NTEU noted, a union may choose to include such information in a notice of its own devising. This approach would allow a union to explain to its members the union’s particular procedures and time constraints applicable to a member’s claims, a choice left available to unions under the final rule.

#### *E. Dissemination of the Notice*

The NPRM proposed that labor organizations subject to the CSRA standards of conduct may meet their duty to inform members about their rights by any method as long as it was reasonably calculated to reach all members. The NPRM also solicited comments from the public with regard to the following two issues: (i) Whether a posting, either permanent or periodic, at a union’s offices and on agency bulletin boards to which the union has access by virtue of its status as bargaining representative would adequately apprise members of their rights as union members; and (ii) whether a union which has a Web site must be required to include a link to CSRA Union Member Rights or the union’s own notice.

A common theme in the comments received by the Department was that unions should be required to use a combination of methods to disseminate notice of members’ rights. For example, Congressman Johnson urged the Department to issue a rule that would require unions to incorporate such notices in their constitutions, post notices at union offices and on bulletin boards, and deliver the notice by e-mail where possible. The SUPA recommended that a “combination of communication methods” is preferable. It suggested that unions should provide “(1) verbal and written notice during new member orientation; (2) a mailing to all members with election notices; (3) e-mail notification; and (4) bulletin board posting.”

The Department has concluded that notification to individual members must be in writing. The Department also has concluded that a union must use personal delivery, regular mail, or electronic mail, alone or in

combination, to provide notification to members. Further, if a union has a Web site it must also include such notification on the Web site or provide a link to the CSRA Union Member Rights. The Department believes that providing such information on a Web site and posting it on bulletin boards will prove beneficial to members; however, in the Department's view, these resources, either alone or in combination, are inadequate as the sole means of informing members about their membership rights. Each of these points is discussed in greater detail below.

#### 1. Bulletin Board Posting

The NPRM asked whether a posting at a union's offices and on agency bulletin boards would adequately apprise members of their rights as union members. Most of the comments received on this issue expressed the general view that such posting would be inadequate as a primary method of providing notice. NTEU indicated that posting alone would not reach members who spend most or all of their time at third-party worksites or other sites separate from their employer's premises. NTEU stated that Web site posting alone is adequate notice to members and stated that unions without Web sites should be required to post notices in union offices and on agency bulletin boards.

Other comments identified flaws in using posting as a primary means of providing notice. One commenter argued that "all too often the union bulletin board is not placed in a strategic location, because management often has control over exactly where that bulletin board is placed." The AUD noted that it would be too easy for a notice to be covered up or removed from a cluttered bulletin board. This organization further noted that "monitoring union compliance with the requirements of the final rule would be difficult, if not impossible, given the number of bulletin boards in countless government offices and union halls." One comment stated the concern that if such notices were posted in or near union offices members observed reading such notices could become "prime targets for retaliation." The comments, however, generally supported posting as a supplement to other methods. For example, the EFF suggested that a permanent posting would be a good supplement to individual notice to members.

The Department has concluded that posting the members' rights notice on bulletin boards to which a union has access is less likely than other methods to ensure that members will be

adequately apprised of their rights. As discussed below, a mailing to individual members is far more likely to reach individual members than a posting. The Department has also considered and rejected the comment suggesting bulletin board posting as an alternative to Web site posting when the union does not maintain a Web site. The commenter proposed this idea while arguing that Web site notice was sufficient alone, and that bulletin board posting would be required only for unions without a Web site. The Department has chosen to require direct, individual notice to members, and it is doubtful that the commenter would support bulletin board posting as a supplemental measure. In any event, the drawbacks of bulletin board posting in terms of location, accessibility, visual clutter, and compliance monitoring make this an ineffective means for disseminating notice.

#### 2. Web Site Posting

The Department proposed that if a union maintains a Web site, it must include as part of the site a notification to members of their rights as union members. Under the proposal, a union could choose to develop its own notice or include a link to CSRA Union Member Rights. The comments expressed general support for the proposal, but noted some concerns.

IFPTE argued that its Web site "plays a pivotal role" in communications with its members: "It's reasonable to expect that Web site notification will be extremely effective at keeping members informed of their rights as union members." IFPTE, as well as NTEU, argued that notification on the union's Web site, by itself, is adequate to apprise members of their rights as union members.

The AUD supported the Web site posting as one method of notification, stating that "the financial burden these requirements would impose on affected unions would be minimal, amounting to mere pennies per union member covered." AUD cited Arthur B. Shostak, *The Cyberunion Handbook: Transforming Labor Through Computer Technology 4* (2002) for the proposition that "by January 2000, some 60 percent of union homes already had at least one computer \* \* \* and that percentage is undoubtedly much higher five years later." Another commenter stated that information is "consistently and continuously" posted on his union's Web site. One union urged the Department to "allow federal sector unions to comply by providing notice via the parent union Web site or the subordinate body Web site." It further

affirmed that "Web site notice has the advantage of being continuing in nature, readily accessible, and inexpensive for the union to maintain." Similarly, another commenter indicated that Web site posting would "keep administrative costs at a minimum while still informing members of their rights."

On the other hand, one comment stated that Web site posting denies information to members without Internet access and members who belong to unions that do not maintain a Web site. Another indicated that his union's Web site is difficult to navigate, and another noted his union's difficulty in keeping its Web site current.

While Web posting is continuous and would supplement periodic mailing of notice to members, the Department has concluded that Web posting is not adequate as the sole means for disseminating notice to members. Despite the growing availability of Internet access and the public's familiarity with this technology, it appears that there still may be a significant number of members who lack access to their union's Web site or possess only a limited ability to navigate the site. Each member of a union should receive notification of his or her rights, a purpose that cannot be achieved if Web posting is the only source of this information.

Even though the Department rejects Web posting as the sole means of disseminating notice to members, the Department believes that Web site posting is an effective, efficient, and inexpensive means to provide members with supplemental and continuing notice of their rights. Furthermore, the Department recognizes that union members, like other citizens, increasingly turn to the Internet to obtain basic information from, and transact business with, organizations to which they belong or otherwise interact. Accordingly, the Department has concluded that if a labor organization has a Web site it must include a notice of members' rights on the Web site. Web site posting is only a requirement for unions who maintain Web sites; unions without Web sites will not be required to develop them in order to satisfy the notice requirement.

Finally, one comment suggested that the Department should include on its Web site "questions and answers" that would more fully address union members' rights. The Department will be providing compliance assistance to unions and members and plans to add to the OLMS Web site a "Frequently Asked Questions" section relating to the CSRA standards of conduct.



### 3. Reproducing Notice in the Union's Constitution and Bylaws

The NPRM solicited comments on the following issues: (i) Whether a statement of members' rights should be required as an appendix to a union's constitution and bylaws, (ii) whether and how a union's constitution and bylaws are now made available to members, and (iii) whether including the notice in a union's constitution and bylaws and maintaining proof that each member had received a copy should provide a "safe harbor."

Comments were generally supportive of a rule requiring unions to incorporate the statement of a union member's rights in union constitutions and bylaws. Two organizations (SUPA and AUD) urged the Department to adopt the requirement that a summary of members' rights and officers' responsibilities be included as an appendix to the constitutions of covered labor organizations. The AUD explained that whenever members have problems with their unions, they turn to the constitution for guidance, and that requiring the inclusion of such rights would be a simple, effective, and inexpensive way to comply with the notice requirement. Other comments, although supporting the incorporation of the member's rights notice as an appendix to a union's constitution, expressed concern that union members encounter difficulty in obtaining copies of the union's constitution and bylaws.

Other comments rejected any rule requiring unions to incorporate the statement of a union member's rights in union constitutions and bylaws. NTEU expressed concern that requiring unions to include the notice in this manner "interfere[s] with the union's internal affairs." NTEU also observed that "such a requirement would probably not prove very effective in informing members of their rights as union members"; in its view, members are more likely to learn their rights by "clicking on a button on the union's Web site that leads them directly to a statement of union members' rights." Other comments suggested that a union constitution was inappropriate as a resource to educate members about their rights because the documents may be lengthy and difficult to follow.

Four comments generally opposed a regulation that would allow unions a "safe harbor" by including a members' rights notice in their constitutions. One commenter argued that "[t]o give someone a copy of the constitution and then expect the union to be relieved of its obligation forever is not a practical method of ensur[ing] that people know

and continue to know or be aware of their right[s]." This commenter suggested that a union could comply with the notice requirement if it "gave out copies of the constitution once every three years, and alternated that with just a mailed notice."

The Department is not persuaded that it would be appropriate to require unions to include a statement of members' rights as an appendix to a union's constitution and bylaws. In the Department's view, such a requirement, absent a more compelling showing than supplied by the comments, would be an unwarranted intrusion in the union's internal affairs. The constitution and bylaws provide the foundation for the union's existence and reflect the views of its founders and governing body on the essential terms of the union's governance. The Department believes that these considerations counsel against a Department-mandated requirement that unions include a statement of member rights in their constitutions. Furthermore, the comments about the utility and availability of the constitution have raised some questions about the sole reliance on an appendix to a union's constitution to apprise members of their rights. The Department is concerned about the assertions that union members have difficulty in obtaining copies of their union's constitution. The Department, however, is not persuaded by the argument that a union's choice to include a statement of rights as an appendix to its constitution would be infirm because of the length of the constitution or the impracticality of relying on it as a statement of a union member's rights. In the Department's view, a union would satisfy its obligation under the final rule if it chooses to mail the constitution with a statement of rights as an appendix to its members as the means of providing the required individual notification.

Furthermore, the Department has not been persuaded that the final rule should provide a "safe harbor" for unions that include notice of member rights in their constitutions or bylaws. As noted, the inclusion of a statement in a union's constitution, by itself, does not guarantee that the information has been conveyed to union members.

### 4. E-Mailing Notice to Union Members

The NPRM asked whether sending a notice by e-mail would be acceptable if members have provided their e-mail addresses to the union or the union is permitted to use an agency e-mail system to contact its members. The comments expressed three concerns about the use of e-mail: Its lack of

availability to some members, the impermanency of individual e-mail addresses, and the difficulty of documenting the transmission and receipt of messages. Congressman Johnson and EFF urged that e-mail is acceptable only as a supplement, not an alternative, to formal written notice by regular mail. To avoid some potential problems, a commenter suggested use of the employer-agency's e-mail system because of its ability to provide receipt of delivery.

The Department believes that e-mail provides an acceptable method by which a union may provide notification to its members. E-mail can be an effective, efficient, and inexpensive means for providing members with notice of their rights. Just as a union that chooses to provide notice by U.S. mail must maintain a current list of member addresses, a union that chooses to send notice by e-mail must maintain an updated list of members' e-mail addresses. A labor organization that relies on e-mail to provide notice has the burden of proving that notice has been sent to an operational e-mail address of the member to whom the message is directed. For this reason, the Department encourages unions to maintain records in electronic or other format to show when and to whom the e-mails have been sent and notification that the e-mail has been received, or is undeliverable. Where a union does not have a member's e-mail address on file or an e-mail is "returned" as undeliverable, it must provide notification to the member by hand delivery or regular mail.

The Department does not require that a union utilize a member's personal e-mail address to provide notification. If an agency permits the union to use the agency e-mail system for this purpose, the union may choose to utilize this avenue of communication. If the union chooses to use the agency's system, it must document—either by its own means or the agency's—when and to whom the e-mails have been sent and that the e-mail has been received, or was "returned" as undeliverable. The Department, however, lacks the authority to direct an agency to permit the use of its e-mail system for such purpose, and the Department offers no view on whether an agency may or should permit such use.

### F. Timing of the Notice

The NPRM asked: (i) Whether notice should be given to each member within a certain period of time after the effective date of the rule, (ii) how soon notice should be given to new members, (iii) how frequently a periodic notice

should be given, and (iv) whether inclusion of a members' rights notice in the notice of nominations and elections for 3, 4, and 5-year election cycles would be sufficient notice.

#### 1. Initial Notice After the Rule Becomes Effective

The NPRM sought comment concerning what would constitute a reasonable amount of time to allow unions to provide the first notification to members under the proposed rule. Congressman Johnson and the AUD supported initial notice within a 90-day period after the effective date. The EFF stated that 30 to 60 days would be a sufficient time. While IFPTE and NFFE argued against any notice, they recommended that if the rule was issued that unions should be given one year to develop a notification method. An individual union official stated that unions should be allowed one year to provide notice. Neither the unions nor the union official explained why unions needed this amount of time. NTEU also recommended that unions be allowed one year to provide such notice; it explained that this amount of time would enable the union to establish an appropriate schedule for providing the notice at three-year intervals.

While some commenters supported a shorter period, in the Department's view, a provision that unions provide initial notification to members within 90 days of the rule's effective date allows unions a reasonable amount of time to prepare for, and comply with, the new requirement. Since the rule does not take effect until 30 days after publication, unions actually will have 120 days within which to prepare the notice to their members, determine the distribution method or methods, and update the necessary address lists. This timeframe allows national unions, if they so choose, sufficient time to prepare notice language, either to be mailed directly to their affiliates' members or to serve as a model for their affiliates' use in providing notice to members. Moreover, if a union chooses to use the Department's model notice, there will be no time involved in this step of the process. Unions are already required to maintain home addresses of union members in order to comply with the rules governing notice of elections. 29 CFR 458.29. Unions that maintain a Web site must comply with the additional requirement of posting the statement of members' rights on the Web site or provide a link to the notice posted on the OLMS Web site. The amount of time involved in accomplishing this task, as distinct from preparing the text of the notice, is

estimated to be approximately 15 minutes, and thus does not materially affect the selection of a timeframe.

#### 2. Notice to New Members

The NPRM sought comment concerning how soon a union would be required to provide notice to new members. Only one comment was received on this issue. Congressman Johnson suggested 90 days was a reasonable timeframe. The Department has determined that unions must provide notice to new members within 90 days of becoming a member.

As a matter of administrative practice, unions often choose to provide new members orientation materials relating to the union at or near the time of a member's formal admission to the union. It would be a reasonable practice for a union to provide notification of the member's union rights at that time. In other cases, a union might reasonably choose to leave this task to the national or international union to which it belongs, if any. In such case, there may be some time lag involved in national or international unions receiving new member information from a local, the processing of the information by the parent organization, and the mailing of a membership package to the new member. Ninety days should provide ample time for a union to provide the required notification to its new members.

The NPRM also sought comment on possible alternatives to providing individuals with a full statement of their rights at the time they become members. One commenter suggested that all members of a bargaining unit be provided a statement of the rights of union members. The Department declines this suggestion. There are only one or two provisions of the CSRA Union Member Rights notice that would arguably be of more than passing interest to nonmembers of the union. The added benefit gained by providing information to nonmembers would be greatly outweighed by the costs to unions in identifying, locating, and providing notice to these individuals. Furthermore, the portions of the CSRA for which the Assistant Secretary has responsibility concern requirements and prohibitions on unions in relation to their members, the membership's moneys, and affiliated unions. 5 U.S.C. 7120. These portions do not address a union's relationship with nonmembers in any substantial way. In addition, the analogous private sector requirement requires every labor organization to inform *its members* of the provisions of the LMRDA, see 29 U.S.C. 415, and the Assistant Secretary's rulemaking in this

area is to conform generally with private sector principles, 5 U.S.C. 7120(c).

Two commenters referred to the completion of the Form SF 1187 by a prospective union member as a possible opportunity to apprise members of their rights. The SF 1187 has been developed by the Office of Personnel Management for use by federal employees, their employer, and unions to authorize a federal agency, at the employee's written direction, to deduct union dues from the employee's pay. One commenter noted that the form does not contain a statement of such rights and does not ask an employee to provide an e-mail address. The other commenter expressed concern that if the union used a handout that combined the Form SF 1187 and a notification of members' rights that the individual member would not retain a copy of the handout for his or her files. Notwithstanding these concerns, the Department believes that the signing of the Form SF 1187 may provide a good opportunity to notify individuals of their rights as union members. By keeping copies of the completed form and instructions the individual has a summary of his rights as a union member and the union has a record of providing notification of such rights to the individual. Individuals are competent to make their own choice about what documents to retain, and the Department cannot require a union to act as a guarantor that members actually retain a copy of documents provided to them. Thus, a union that chooses to distribute the required notice in conjunction with the Form SF 1187 will be deemed to have met its requirement to provide notice to new members, despite the individual's status as a nonmember at the time of receipt. Because it is important to both the individual and the union that they have a common understanding of their rights and obligations at or about the time the individual joins the union, the Department also will treat similar information provided by a union to a potential member, where properly documented, to satisfy its notification obligation.

#### 3. Periodic Notice

The NPRM proposed that unions must inform members of their rights at least once every three years. The NRTWF argued that three years was too long an interval between notices because members do not exercise their rights on a three-year timetable. The NRTWF, EFF, and an individual union officer argued that notice should be given every year. The NRTWF noted that management in the Federal sector must inform employees of certain rights on an

annual basis under 5 U.S.C. 7114(a)(3). Congressman Johnson and the AUD supported the three-year notice interval, while noting that a shorter period might be appropriate. An individual commenter thought that notifying members every four or five years was sufficient provided that notices were required to be given in advance of union nomination and election periods. Interwoven with the question regarding the frequency of notification is the question of whether notification should be permitted or required as part of a union's required mailings in connection with its elections for officers. For local unions, such elections must be conducted not less often than every three years. 29 CFR 458.29.

The comments support a finding that union members should be informed and reminded of their rights on a recurring basis. The Department has determined to retain the requirement in the proposal that notice shall be provided to members not less than every three years. While some comments urged the Department to require annual notice, others stated that there should be no periodic notice requirement but, if required, intervals should be longer than three years. Many agreed that the three-year interval is administratively convenient because local unions may choose to mail the notice at the same time they mail notices of union officer elections. In the Department's view, three years is an appropriate interval to remind members of their rights; it ensures that members will receive notice at least once during the maximum timeframe allowed for local union officer elections, but does not carry the burden of yearly notification.

One commenter argued that the period of notice should correlate with the union's national election cycle. On that issue, the EFF supported sending out a rights notice along with the notice of elections, but only if members also received notice by some other method. The AUD noted that administrative convenience was served by allowing the notice to be sent with the election notice given the typical three-year election cycle. It added, however, that providing notice in this manner was not an effective way to reach union members who lack an active interest in the union's election. Congressman Johnson, the EFF, the AUD, and an individual commenter argued that a union should not be permitted to rely on this method, especially in the case of the four or five-year election cycles typical for national or intermediate bodies.

With regard to the question whether notification should be required or permitted in connection with a union's

officer election notices, the Department has determined that unions should be permitted, but not required, to include the notice of members' rights with the statutorily-required notice of election. The Department is not persuaded that mailing the rights notice with the election notice will be less effective than notice provided by other means. Membership in an organization entails some obligations, and among them is the duty to read documents mailed to them by the organization.

The Department is not persuaded by a suggestion that a union should be unable to satisfy its CSRA Union Member Rights notice obligation by including a statement of rights in a union newsletter, distributed to all members. In the Department's view, notice included in a union publication is adequate as long as it is presented with sufficient prominence to attract the attention of a member receiving the publication. This is consistent with the Department's experience in administering a regulation permitting notice of elections to be included in union newspapers. See 29 CFR. 452.75.

#### *G. Notice Provided by Another Labor Organization*

The Department proposed that a union's duty to provide notification may be satisfied by notice provided to its members by another labor organization. For example, if Member A is a member of Federal Union, Local 1, the obligation of his local to provide notification is satisfied if it is provided by either Local 1, the Council of East Coast Locals (an intermediate body to which it is affiliated), or the National Federal Union. No objections to this proposal were received. The Department has concluded that a union may demonstrate compliance with the notice requirement if another union has provided the appropriate notice to all its members.

One comment suggested that a union should not be required to include a link on its Web site if the appropriate notice is posted on its parent or other affiliated union's Web site. The Department disagrees. As discussed, the Web site posting is required only of unions that choose to maintain Web sites. Where such Web sites exist, it is reasonable for union members to rely on those sites for basic information relating to their union. Therefore, a union that maintains a Web site must include notification on its site without regard to whether an affiliated union has provided written notification to its members or such affiliate has published the notification on its Web site.

#### *H. Mechanism for Enforcing the Members' Rights Notice Requirement*

The NPRM proposed enforcement of the notice requirement solely by OLMS with or without a complaint by a union member. The proposal also asked for comment on whether enforcement should be vested in individual union members. Relatively few comments were received on this point. NTEU endorsed the proposed method of enforcement. One union member noted that some people could not afford the expense of bringing a case, thus requiring that OLMS undertake prosecution as a matter of fairness.

The SUPA urged that enforcement authority should be vested in both OLMS and union members and suggested that members should be permitted to bring an action in U.S. District Court in a manner similar to that permitted under section 201(c) of the LMRDA. 29 U.S.C. 431(c). NFFE commented that the new rule would place additional demands on the resources of OLMS at a time when, in the union's "understanding," OLMS is unable to undertake "malfeasance investigations" in a timely manner. NFFE acknowledged, however, that enforcement should reside with OLMS, not individuals, because litigation by individuals unnecessarily increases litigation costs for unions because of the potential for unsubstantiated lawsuits.

The CSRA, unlike the LMRDA, does not confer jurisdiction on Federal district courts. The Department cannot by regulation extend a private right of action to union members in Federal district court to vindicate their regulatory right to notice of the CSRA provisions. Furthermore, to the extent that SUPA's position would be satisfied by allowing a union member to prosecute an alleged violation in an adjudicatory proceeding before the Department, the Department believes that any benefit that may be gained is outweighed by the potential cost to unions and the Department's adjudicative resources from having to adjudicate claims that have not been preliminarily screened for merit by OLMS. Supporting this is the fact that although NFFE opposed vesting enforcement authority in OLMS on the ground that the Department "appears to be incapable of completing financial malfeasance investigations in a timely manner," NFFE also pointed out that unions' litigation costs likely will be reduced by keeping enforcement solely in the control of OLMS because any frivolous complaints are "weeded out" at a cost savings to the unions and the Department's adjudicative resources.

In this same vein, a different comment argued that both an individual and OLMS should be able to prosecute an alleged violation of the notification requirement. The commenter would have the individual bring an allegation before an Administrative Law Judge (ALJ) as opposed to in U.S. District Court, as expressed by SUPA. Once again, the Department is not persuaded that individual enforcement is appropriate as an adjunct to OLMS prosecution. Under the proposed enforcement scheme, OLMS can proceed without a complaint, or a union member can file a complaint with OLMS about the failure of their union to comply with the notice requirement.

The enforcement procedure already is set out in the Department's regulations. An OLMS District Director may investigate pursuant to 29 CFR 458.50(b) when he or she believes it necessary in order to determine whether a violation has occurred or is about to occur. If a violation of this rule is discovered, the OLMS District Director will notify the union pursuant to 29 CFR 458.66(b) and will attempt to secure an agreement for appropriate remedial action pursuant to 29 CFR 458.66(c), which ordinarily will be the union's compliance with the notification requirement. If no agreement is reached with the union, the District Director will file a complaint with the DOL Chief Administrative Law Judge. The proceedings before the ALJ will be governed by sections 458.67 through 458.93, 29 CFR 458.67 through 458.93. The Standards of Conduct provisions of the CSRA (5 U.S.C. 7120) do not authorize monetary penalties or debarments for violations of its provisions. The practice under the CSRA is similar to the procedure under the LMRDA where the Secretary files an enforcement action in a U.S. District Court against a union that fails to file its required annual financial report. If the action is successfully prosecuted, the district court will issue an order requiring the union to file the report.

If members were given direct enforcement rights such as provided by section 458.54 of the regulations, 29 CFR 458.54, to lodge a bill of rights action, they would still have to file a complaint with an OLMS District Director, who would have to "obtain such additional information as he deems necessary" and then would refer the matter to the Chief ALJ if he found "a reasonable basis for the complaint." The member would have the burden and expense of proving his or her allegations in a hearing before an ALJ. This scenario is avoided in the enforcement scheme selected here.

Moreover, as discussed above, there is no persuasive reason to provide members a right to prosecute a complaint without an initial determination by OLMS that there exists a reasonable basis to the complaint.

Finally, in response to NFFE's assertion that there is an "understanding that the Department appears to be incapable of completing financial malfeasance investigations in a timely manner," the Department notes that NFFE has provided no substantiation for its claim, which, in any event, is unfounded. Moreover, Congress has recently allocated increased resources to OLMS, which should alleviate any concern that OLMS investigations will be delayed by taking on additional enforcement responsibilities under this rule.

The Department has determined to retain the proposed enforcement procedure. OLMS will use the existing administrative mechanism in the standards of conduct regulations (29 CFR 458.66–459.5) for resolving complaints related to this rule. Where OLMS determines after investigation that a violation has occurred and has not been remedied, OLMS will institute enforcement proceedings against the labor organization before the Department's Office of Administrative Law Judges.

### III. Regulatory Procedures

#### *Executive Order 12866*

This final rule has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this final rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Because compliance with the rule can be achieved at low cost to covered labor organizations, the rule is not likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. Because of its importance to the public, however, the rule was treated as

a significant regulatory action and was reviewed by the Office of Management and Budget.

Prior to issuing the proposed rule, the Department sought the involvement of those individuals and organizations that will be affected by the rule, including officers and members of labor organizations that would be subject to the rule. It was determined that the rule will impose certain burdens associated with the requirement that labor organizations representing Federal employees must inform their members of the CSRA standards of conduct provisions and the regulations promulgated to carry out the purposes of the CSRA, 29 CFR 458.1–458.38. According to the latest available Office of Personnel Management figures, as of January 1, 2001, there were 1,043,479 federal employees in bargaining units, and these units were represented by 2,199 local unions. Not all of these employees belong to a union, but that number can be used as the maximum theoretical number of members who must be informed of their rights. Since unions are free to add the rights notice to the mandatory election notice that locals by law must mail to their members every three years, the Department assumes that unions will take advantage of this cost-effective method of distributing the notice. Under such circumstances, the cost to unions would, at most, entail the cost of 1,043,479 photocopies of the notice, at \$.15 per page, resulting in an expenditure of \$156,521 every three years, for annualized costs borne by all public sector unions of \$52,174.

It is conceivable that the required notice will increase the weight of each piece of mail to the next highest ounce, thus resulting in a \$.24 fee for an extra ounce of first class postage for each envelope. This additional mailing cost would amount at most to \$250,435 every three years, for an annualized cost of \$83,478. Summing the maximum copying costs and the maximum additional postage costs results in an additional \$406,956 expenditure every three years, and a maximum total annualized cost for all unions of \$135,652. Stated otherwise, the annualized cost to unions would be \$.13 per member. Intermediate and national labor organizations would not have to provide separate notice as, pursuant to purposed section 458.4(b), they could rely on mailings made by their subordinate locals. (Or conversely, it could be the national or international that chooses to undertake the notification and bear the costs associated with it either directly or by charging the cost back to the affiliates).

The approximately 2,199 local unions would be subject to an annualized average maximum cost of \$61.68. Finally, unions that maintain a Web site would be required to create a link to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or the union's own notice. The Department has no data on the number of unions that maintain a Web site. In addition to the 2,199 local unions, the Office of Personnel Management reports 80 national and international unions and associations that have, directly or through local units, exclusive recognition with departments and agencies of the Executive Branch. Thus it is theoretically possible that 2,279 unions would be required to create such a link. Assuming that the median annual salary of a webmaster is \$80,000 and the creation of a link would take 15 minutes, the one-time labor cost of this requirement would be \$22,790, or \$10 per union.

None of the commenters disputed the accuracy of the burden estimates set forth in the NPRM. NFFE claimed that the new rule would place an undue burden on unions but did not document this general claim and did not dispute the accuracy of the OLMS projections. By contrast, the AUD commented that the financial burden imposed by the rule would amount to "mere pennies" per union member covered. And the form comments received stated: "[w]hatever small amount it costs the unions to perform this vital function is a small price to pay for the benefit [obtained]."

#### *Small Business Regulatory Enforcement Fairness Act*

The Department has concluded that this final rule is not a "major" rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, et seq.). It will not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Executive Order 13132: Federalism*

The Department has reviewed this final rule in accordance with Executive Order 13132, regarding federalism, and has determined that the rule does not

have "federalism implications." The economic effects of the rule are not substantial, and it has no "direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### *Regulatory Flexibility Act*

The final rule would not have a significant economic impact on a substantial number of small business entities. The rule will have only an insignificant impact on any covered labor organization. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule has no substantial impact on any small business entity and, therefore, a regulatory flexibility analysis is not required.

#### *Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

#### *Paperwork Reduction Act*

This final rule will impose certain minimal burdens associated with informing members of their rights. As noted in proposed section 458.4, a labor organization may satisfy its obligation by either using language supplied by the Department or devising its own language as long as the notice accurately states all of the CSRA standards of conduct provisions. Under the regulations implementing the Paperwork Reduction Act, "[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public" is not considered a "collection of information" under the Act. 5 CFR 1320.3(c)(2). Therefore, the notice is not subject to the Paperwork Reduction Act.

#### *Executive Order 12988: Civil Justice Reform*

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities. The proposal specifies

clearly the effect of the rule on existing rules and the provisions affected.

#### *Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

#### *Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, because it does not interfere with private property rights protected under the Fifth Amendment of the Constitution.

#### *Environmental Impact Assessment*

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

#### *Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

#### **List of Subjects in 29 CFR Part 458**

Administrative practice and procedure, Labor unions, Democratic rights of labor organization members, Reporting and recordkeeping requirements, Standards of conduct for labor organizations.

#### **Text of Final Rule**

■ Accordingly, the Department amends 29 CFR Chapter IV as set forth below.

#### **PART 458—STANDARDS OF CONDUCT**

■ 1. The authority citation of part 458 is revised to read as follows:

**Authority:** 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C.

1351(a)(1); Secretary's Order No. 4–2001, 66 FR 29,656, May 31, 2001.

■ 2. A new § 458.4 is added to read as follows:

**§ 458.4 Informing members of the standards of conduct provisions.**

(a) Every labor organization subject to the requirements of the CSRA, the FSA, or the CAA shall inform its members concerning the standards of conduct provisions of the Acts and the regulations in this subchapter. Labor organizations shall provide such notice to members by October 2, 2006 and thereafter to all new members within 90 days of the time they join and to all members at least once every three years. Notice must be provided by hand delivery, U.S. mail or e-mail or a combination of the three as long as the method is reasonably calculated to reach all members. Such notice may be included with the required notice of local union elections. Where a union newspaper is used to provide notice, the notice must be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the notice in a particular issue is readily apparent to each member.

(b) A labor organization may demonstrate compliance with the requirements of paragraph (a) of this section by showing that another labor organization provided an appropriate notice to all of its members during the necessary time frame.

(c) Labor organizations may use the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act (available on the OLMS Web site at <http://www.dol.gov/esa/regs/compliance/olms/CSRAFactSheet.pdf> for the pdf version and <http://www.dol.gov/esa/regs/compliance/olms/CSRAFactSheet.htm> for the html version) or may devise their own language as long as the notice accurately states all of the CSRA standards of conduct provisions as set forth in the fact sheet.

(d) If a labor organization has a Web site, the site must contain a conspicuous link to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or, alternatively, to the labor organization's own notice prepared in accordance with paragraph (c) of this section.

Signed at Washington, DC, this 24th day of May 2006.

**Victoria A. Lipnic,**  
*Assistant Secretary for Employment Standards.*

Signed at Washington, DC, this 24th day of May 2006.

**Don Todd,**  
*Deputy Assistant Secretary for Labor-Management Programs.*  
[FR Doc. E6–8626 Filed 6–1–06; 8:45 am]

**BILLING CODE 4510–CP–P**

---

**DEPARTMENT OF DEFENSE**

[DOD–2006–HA–0089]

**32 CFR Part 199**

**RIN 0720–AA93**

**Office of the Secretary; TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2005; TRICARE Dental Program**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department is publishing this final rule to implement sections 711 and 715 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA for FY05), Public Law 108–375. Specifically, that legislation makes young dependents of deceased Service members eligible for enrollment in the TRICARE Dental program when the child was not previously enrolled because of age, and authorizes post-graduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association to provide dental treatment to dependents who are 12 years of age or younger and who are covered by a dental plan established under 10 U.S.C. 1076a. This adopts the interim rule published on September 21, 2005 (70 FR 55251).

**DATES:** *Effective Date:* June 2, 2006.

**ADDRESSES:** TRICARE Management Activity, TRICARE Operations/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

**FOR FURTHER INFORMATION CONTACT:** Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681–0039. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:**

**I. Overview of the Rule**

Opportunity for Young Child Dependent of Deceased Member To Become Eligible for Enrollment in a TRICARE Dental Plan

Currently, military members may enroll dependent children of any age in the TRICARE Dental Program (TDP), but many members choose not to enroll young children until they are automatically enrolled at four years of age. Unfortunately, when a member on active duty for a period of more than thirty days or a member of the Ready Reserve (i.e., Selected Reserve and Individual Ready Reserve) dies, dependent children less than four years of age who are not enrolled in the TDP at the time of the member's death are ineligible for enrollment for the three-year TDP survivor's benefit. The NDAA for FY05 corrects this inequity by giving young dependent children of deceased Service members the opportunity to become eligible for enrollment in the TDP although they were not previously enrolled due to their age.

Professional Accreditation of Military Dentists

Currently, § 199.13(a)(2)(iii) of this part excludes dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TRICARE Dental Program (TDP) from obtaining benefit services provided by the TDP in military dental care facilities except for emergency treatment, dental care provided outside the United States, and services incidental to non-covered services. Due to insufficient numbers of pediatric patients available for treatment in DoD's training facilities, the uniformed services faced significant problems with program accreditation and pediatric dental training. The Services had difficulty maintaining accreditation of post-graduate training programs because of a lack of pediatric dental patients with the proper dental case mix required for training. In addition, without adequate case numbers and case complexity, residents who at completion of their training were assigned overseas were not always fully trained to manage and treat pediatric dental patients.

Section 715 of the NDAA for FY05 provides the uniformed services with authority to maintain American Dental Association accreditation standards for certain military dental specialty training programs that require treatment of pediatric patients and to provide pediatric training to meet requirements for the delivery of authorized dental care to children accompanying sponsors at OCONUS locations. The statute