

Subpart N—[Amended]

- 16. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 17. Section 416.1403 is amended by adding new paragraph (a)(25) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(25) Issuing a receipt in response to your report of a change in your earned income.

Subpart R—[Amended]

- 18. The authority citation for subpart R is revised to read as follows:

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

- 19. Section 416.1861 is amended by redesignating paragraphs (b), (c), (d), (e) and (f) as (c), (d), (e), (f) and (g), adding new paragraph (b), and revising newly redesignated paragraph (f) to read as follows:

§ 416.1861 Deciding whether you are a child: Are you a student?

* * * * *

(b) *If you are instructed at home.* You may be a student regularly attending school if you are instructed at home in grades 7–12 in accordance with a home school law of the State or other jurisdiction in which you reside and for at least 12 hours a week.

* * * * *

(f) *When we need evidence that you are a student.* We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.

* * * * *

- 20–21. Add a new § 416.1870 and undesignated center heading to read as follows:

Who Is Considered a Student for Purposes of the Student Earned Income Exclusion

§ 416.1870 Effect of being considered a student.

If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse or ineligible parent for deeming purposes and we consider you

to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 explains what we mean by earned income. Section 416.1112(c)(3) explains how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemons.

- 22. Add a new § 416.1872 to read as follows:

§ 416.1872 Who is considered a student.

We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in § 416.1861(a) through (e).

- 23. Add a new § 416.1874 to read as follows:

§ 416.1874 When we need evidence that you are a student.

We need evidence that you are a student if you are under age 22 and you expect to earn over \$65 in any month. Section 416.1861(g) explains what evidence we need.

[FR Doc. E6–19232 Filed 11–16–06; 8:45 am]

BILLING CODE 4191–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AA95

Payment of Premiums; Assessment of and Relief From Penalties

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule adopts policy guidance on premium penalty waivers, including guidance on the meaning of “reasonable cause” for premium penalty waivers. For the convenience of the public, this guidance is being codified as an appendix to PBGC’s premium payment regulation.

DATES: *Effective date:* December 18, 2006. The amendments made by this rule apply to PBGC actions taken on or after December 18, 2006.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative & Regulatory Department, or Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–

877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). When a single-employer plan terminates without sufficient assets to provide all benefits, PBGC steps in to ensure that participants and beneficiaries receive their plan benefits, subject to certain legal limits. PBGC also provides financial assistance to multiemployer plans that become unable to pay benefits.

ERISA and PBGC’s regulations require that premiums be paid to PBGC. To promote the effective operation of the insurance program under Title IV, ERISA section 4007 authorizes PBGC to assess penalties for not paying premiums in full and on time (“premium penalties”). See PBGC’s regulation on Payment of Premiums (29 CFR Part 4007).

A premium penalty is owed by any person that was liable for the premium—generally the plan administrator and, in the case of a single-employer plan, the contributing sponsor(s) and any controlled group members. (Under ERISA section 4006(a)(7)(D)(i)(II), as added by section 8101 of the Deficit Reduction Act of 2005, Pub. L. 109–171, February 8, 2006, the plan administrator is not liable for the \$1,250 per-participant premium that applies to certain distress and involuntary plan terminations under that section.) Thus, a premium penalty (other than a penalty for failure to timely pay the \$1,250 per-participant premium under ERISA section 4006(a)(7)), may generally be paid out of plan assets; see PBGC Opinion Letter 94–6 and the legislative history cited in that letter.

PBGC’s premium payment regulation includes provisions for determining the amount of premium penalties and provides for the waiver of those penalties upon demonstration of reasonable cause and in other specified circumstances. Reconsideration of premium penalty assessments is covered by PBGC’s regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003). However, neither the premium payment regulation nor the administrative review regulation currently provides a thorough and detailed treatment of reasonable cause and other bases for premium penalty waivers.

On January 12, 2001, PBGC published in the **Federal Register**, at 66 FR 2856, a proposed rule to expand and codify its previously published penalty policies. The 2001 proposed rule dealt both with premium penalties under ERISA section 4007 and with penalties for failures to provide certain information in a timely manner under ERISA section 4071. In particular, the proposed rule set forth detailed guidance on determining whether there is “reasonable cause” that would justify a waiver of premium penalties. The PBGC received no comments on the 2001 proposed rule.

Provisions of This Rule

This final rule provides policy guidance on premium penalty waivers, including guidance on the meaning of “reasonable cause” for premium penalty waivers. As discussed below, guidance is not being issued at this time on the determination of the amount of premium penalties nor on procedures for the assessment and review of premium penalties. Otherwise, the provisions in this final rule are generally the same as the premium penalty provisions in the 2001 proposed rule with only minor changes. As in the 2001 proposed rule, the premium penalty policy guidance in this final rule takes the form of an appendix to PBGC’s regulation on Payment of Premiums (29 CFR part 4007).

This rule does not affect the use of any other remedies available to PBGC and does not address the settlement of legal disputes involving penalties, either alone or in the context of other legal issues. This rule does not address penalties under ERISA section 4302, which applies to certain failures to provide multiemployer plan notices required under subtitle E of title IV of ERISA and implementing regulations, or under ERISA section 4071, which applies to failures to provide information on time.

Premium Penalty Assessment

The 2001 proposed rule summarized the rules on determining the amount of premium penalties in the premium payment regulation. That summary provided no new guidance and is not being included in the premium penalty policy appendix at this time.

Premium Penalty Waivers

As described in the premium penalty policy appendix, a premium penalty may be waived, in whole or in part, for a number of reasons, based on the facts and circumstances. The most common reason for waiving a penalty is “reasonable cause.” Reasonable cause is generally found if—

- *Circumstances beyond control.* The violation arises from circumstances beyond the control of the person whose action or inaction may be the basis for a penalty assessment, and

- *Ordinary business care and prudence.* The failure could not be avoided by exercising ordinary business care and prudence. The size of the organization and of the premium involved may affect the ordinary business care and prudence that is expected in order to find reasonable cause.

The premium penalty policy appendix includes examples of situations where reasonable cause might be found, such as the sudden and unexpected absence or inability to act of an individual with responsibility to act, the destruction of relevant records or inability to comply resulting from a fire or other casualty or natural disaster, and reasonable reliance on erroneous oral or written communication by a PBGC employee.

The appendix also describes other types of waivers:

- *Statutory or regulatory requirement.* The appendix notes for completeness that a penalty is waived if a statute or regulation so requires.

- *Legal error.* The appendix provides that a penalty may be waived if the violation arises from reliance on an erroneous interpretation of law—with different standards depending on whether the interpretation is or is not disclosed to PBGC—or, in appropriate circumstances, from a recent change in the law.

- *Pendency of PBGC procedures.* The appendix provides for waiver in some cases of all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures.

- *Other circumstances.* The appendix also notes that, in other narrow circumstances, we may waive a penalty where appropriate.

This part of the appendix has been reorganized to group the material differently (placing all the provisions about legal errors under one heading), eliminate an example about an insignificant math error, and add an example of PBGC procedures (other than review procedures) whose pendency could be the basis for a waiver.

The explanation of the “other circumstances” waiver category has also been revised. In the 2001 proposed rule, this provision was said to be aimed primarily at cases where a premium penalty assessment would be “inconsistent with the purposes of title IV.” That language conveys a standard

more restrictive than PBGC now considers appropriate and has been eliminated.

In exercising premium penalty waiver authority and determining whether reasonable cause exists, the premium penalty policy appendix provides that an organization’s outside advisors, such as lawyers or actuaries, are treated as if they were part of the organization. Thus, organizations with in-house advisors are treated the same in this respect as those that choose to retain outside advisors. Exercising care in selecting and monitoring advisors is not a basis for a reasonable cause waiver when the advisors are in-house; similarly, it is not considered a basis for a reasonable cause waiver where outside advisors are involved. Because it is so common for premium payers to use advisors in determining premiums, the payment of premiums could not adequately be enforced if premium penalties were waived in such circumstances. Nothing in this final rule is intended to limit any recourse that an organization may have against its outside advisors.

Premium Penalty Procedures

The 2001 proposed rule set forth procedures for assessing and reviewing premium penalties. The procedural provisions are not included in the premium penalty policy appendix at this time. Procedural implications of the new \$1,250 per-participant premium may affect further premium penalty procedural guidance.

Miscellaneous Changes

There are a number of organizational and editorial changes from the 2001 proposed rule. Principal among these is the placement of provisions on assessment and waiver toward the beginning of the appendix, with a place reserved for procedural provisions at the end of the appendix. In addition, a new § 4 has been added to the appendix, briefly summarizing the information in the appendix and indicating where it is located.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

This rule is not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it deals only with general statements of PBGC policy. The PBGC nonetheless invited comment on the 2001 proposed rule. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility

Act does not apply. See 5 U.S.C. 601(2), 603, 604.

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

■ For the reasons given above, 29 CFR part 4007 is amended as follows.

PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 2. In § 4007.8, the introductory text of paragraph (a) is amended by removing the words “The charge will be based on” and adding in their place the words “The amount determined under this paragraph (a) will be based on”; and paragraphs (c) and (d) are revised to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(c) Reasonable cause waivers. PBGC will waive all or part of a late payment penalty charge if PBGC determines that there is reasonable cause for the late payment. Policy guidelines for applying the “reasonable cause” standard are in §§ 22 through 25 of the Appendix to this part.

(d) *Other waivers.* PBGC may waive all or part of a late payment penalty charge in other circumstances without regard to whether there is reasonable cause. Policy guidelines for waivers without reasonable cause are in § 21(b)(1), (b)(3), (b)(4), and (b)(5) of the Appendix to this part.

* * * * *

■ 3. An appendix is added to part 4007 to read as follows:

APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

Sec.

General Provisions

- 1 What is the purpose of this Appendix?
- 2 What defined terms are used in this Appendix?
- 3 What is the purpose of a premium penalty?
- 4 What information is in this Appendix and how is it organized?

Premium Penalty Assessment

[Reserved.]

Waiver Standards

- 21 What are the standards for waiving a premium penalty?
- 22 What is “reasonable cause”?
- 23 What kinds of facts does PBGC consider in determining whether there is

reasonable cause for a failure to pay a premium?

- 24 What are some situations that might justify a “reasonable cause” waiver?
- 25 What are some situations that might justify a partial “reasonable cause” waiver?

Procedures

[Reserved.]

General Provisions

§ 1 What is the purpose of this Appendix?

This appendix sets forth principles and guidelines that we intend to follow in assessing, reviewing, and waiving premium penalties. However, this is only general policy guidance. Our action in each case is guided by the facts and circumstances of the case.

§ 2 What defined terms are used in this Appendix?

The following terms are defined in part 4001 of this chapter: contributing sponsor, ERISA, PBGC, person, plan, and plan administrator. In addition, in this appendix:

(a) *Premium penalty* means a penalty under ERISA section 4007 and under this part for failing to pay a premium in full and on time.

(b) *Waiver* means reduction or elimination of a premium penalty that is being or has been assessed.

(c) *We* means PBGC.

(d) *You* means, according to the context,—

(1) A plan administrator, contributing sponsor, or other person, if—

(i) The person’s action or inaction may be the basis for a premium penalty assessment,

(ii) The person may be required to pay the premium penalty, or

(iii) The person is requesting review of the premium penalty; or

(2) An employee or agent of, or advisor to, any of these persons.

§ 3 What is the purpose of a premium penalty?

The basic purpose of a premium penalty is to encourage you to pay premiums in full and on time and to voluntarily self-correct any failure to do so.

§ 4 What information is in this Appendix and how is it organized?

This Appendix has four divisions: (a) *General provisions.* The General Provisions division (§§ 1–4) tells you the purpose and organization of the Appendix, the purpose of a premium penalty, and the definitions of terms used in the Appendix.

(b) *Premium penalty assessment.* The Premium Penalty Assessment division is reserved.

(c) *Waiver standards.* The Waiver Standards division (§§ 21–25) explains the principles that PBGC follows in waiving premium penalties.

(1) *Reasonable cause.* We waive premium penalties for reasonable cause, as explained in §§ 22–25.

(2) *Other waivers.* We also waive premium penalties in some other circumstances, such as mistake of law, as explained in § 21.

(d) *Procedures.* The Procedures division is reserved.

Premium Penalty Assessment

[Reserved.]

Waiver Standards

§ 21 What are the standards for waiving a premium penalty?

(a) *Facts and circumstances.* In deciding whether to waive a premium penalty in whole or in part under paragraph (b), we consider the facts and circumstances of each case.

(b) *Waivers.*

(1) *Provisions of law.* We waive all or part of a premium penalty if a statute or regulation requires that we do so. For example, ERISA section 4007(b) and § 4007.8 of this part provide for a waiver in certain circumstances involving business hardship, and § 4007.8 of this part also provides for waivers if certain “safe harbor” tests are met, and for a waiver of a premium penalty that accrues after the date of a bill for a premium underpayment if you pay the premium owed within 30 days after the date of the bill.

(2) *Reasonable cause.* We waive a premium penalty if you show reasonable cause for a failure to pay a premium in full and on time. See §§ 22 through 25 for guidelines on “reasonable cause” waivers. If there is reasonable cause for only part of a failure to pay a premium, we waive the premium penalty only for that part.

(3) *Legal errors.* We may waive all or part of a premium penalty if the failure to pay a premium in full and on time that gives rise to the premium penalty results from certain kinds of legal errors.

(i) *Erroneous legal interpretation—disclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, we waive a premium penalty that arises from the failure if you promptly and adequately call our attention to the interpretation and the relevant facts, and the erroneous interpretation is not frivolous. If the interpretation affects a filing that you make with us, you should call our attention to the interpretation in writing with the filing. If you rely on the interpretation to justify not making a

filing with us, you should call our attention to the interpretation in writing by the time prescribed for the filing not made.

(ii) *Erroneous legal interpretation—undisclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, and you do not promptly and adequately call our attention to the interpretation and the relevant facts, we may nevertheless waive a premium penalty if the weight of authority supporting the interpretation is substantial in relation to the weight of opposing authority and it is reasonable for you to rely on the interpretation.

(iii) *Recent change in the law.* We may waive all or part of a premium penalty if the law changes shortly before the date a premium payment is due and the premium payment that you make by the due date would have been correct under the law as in effect before the change. In determining whether and to what extent to grant a waiver in a case of this kind, we consider such factors as the length of time between the change in the law and the premium due date, the nature and timing of any publicity given to the change in the law, the complexity of the legal issues, and your general familiarity with those issues.

(4) *Pendency of PBGC procedures.* We may waive all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures. For example:

(i) If you request review of a premium penalty, and you make a non-frivolous argument in your request for review that you were not required to pay the premium or that you were, and still are, unable to obtain the information needed to determine the premium, we may waive the portion of the premium penalty that accrues during the review process. If you make such a non-frivolous argument with respect to a portion of the premium, we may apply this principle to that portion.

(ii) We may waive all or a part of a premium penalty if we believe that the pendency of PBGC procedures for identifying a premium delinquency and notifying you of the delinquency contributed to your failure to correct the delinquency more promptly.

(5) *Other circumstances.* We may waive all or part of a premium penalty in other circumstances if we determine that it is appropriate to do so. We intend to exercise this waiver authority only in narrow circumstances.

(c) *Action or inaction of outside parties.* In some cases an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part

of your organization may assist you in complying with PBGC requirements. If the outside individual's or firm's action, inaction, or advice causes or contributes to a failure to pay a premium in full and on time, we apply our waiver authority as if the outside individual or firm were part of your organization. In the case of an outside individual who is part of a firm, we generally consider both the individual and the firm to be part of your organization.

§ 22 What is "reasonable cause"?

(a) *General rule.* In general, there is "reasonable cause" for a failure to pay a premium in full and on time to the extent that—

(1) The failure arises from circumstances beyond your control, and

(2) You could not avoid the failure by the exercise of ordinary business care and prudence.

(b) *Overlooking legal requirements.* Overlooking legal requirements does not constitute reasonable cause.

(c) *Action or inaction of outside parties.* If an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization assists you in complying with PBGC requirements, there is generally no reasonable cause for a failure to pay a premium in full and on time that arises from circumstances within the control of the outside individual or firm, or could be avoided by the exercise of ordinary business care and prudence by the outside individual or firm. The fact that you exercised care and prudence in selecting and monitoring the outside individual or firm is not a basis for a reasonable cause waiver.

(d) *Size of organization.* If an organization or one or more of its employees is responsible for taking action, the size of the organization may affect what ordinary business care and prudence would require. For example, ordinary business care and prudence would typically require a larger organization to establish more comprehensive backup procedures than a smaller organization for dealing with situations such as computer failure, the loss of important records, and the inability of an individual to carry out assigned responsibilities. Thus, there may be reasonable cause for a small organization's failure to pay a premium in full and on time even though, if the organization were larger, the exercise of ordinary business care and prudence would have avoided the failure.

(e) *Size of premium underpayment.* In general, the larger a premium, the more care and prudence you should use to make sure that you pay it in full and on

time. Thus, there may be reasonable cause for a small underpayment even though, under the same circumstances, we would conclude that a larger underpayment could have been avoided by the exercise of ordinary business care and prudence.

(f) *Collection and enforcement.* In determining whether reasonable cause exists, we do not consider either—

(i) The likelihood or cost of collecting the premium penalty, or

(ii) The costs and risks of enforcing the premium penalty by litigation.

§ 23 What kinds of facts does PBGC consider in determining whether there is reasonable cause for a failure to pay a premium?

In determining the extent to which a failure to pay a premium in full and on time arose from circumstances beyond your control and the extent to which you could have avoided the failure by the exercise of ordinary business care and prudence—and thus the extent to which waiver of a premium penalty for reasonable cause is appropriate—we consider facts such as the following:

(a) What event or circumstance caused the underpayment and when the event happened or the circumstance arose. The dates you give should clearly correspond with the underpayment upon which the premium penalty is based.

(b) How that event or circumstance kept you from paying the premium in full and on time. The explanation you give should relate directly to the failure to pay a premium that is the subject of the premium penalty.

(c) Whether you could have anticipated the event or circumstance.

(d) How you responded to the event or circumstance, including what steps you took, and how quickly you took them, to pay the premium and how you conducted other business affairs. Knowing how you responded to the event or circumstance may help us determine what degree of business care and prudence you were capable of exercising during that period and thus whether the failure to pay the premium could or could not have been avoided by the exercise of ordinary business care and prudence.

§ 24 What are some situations that might justify a "reasonable cause" waiver?

The following examples illustrate some of the reasons often given for failures to pay premiums for which we may assess penalties. The situation described in each example may constitute reasonable cause, and each example lists factors we consider in determining whether to grant a

premium penalty waiver for reasonable cause in a case of that kind.

(a) *An individual with responsibility for taking action was suddenly and unexpectedly absent or unable to act.* We consider such factors as the following: The nature of the event that caused the individual's absence or inability to act, for example, the resignation of the individual or the death or serious illness of the individual or a member of the individual's immediate family; the size of the organization and what kind of backup procedures it had to cope with such events; how close the event was to the deadline that was missed; how abrupt and unanticipated the event was; how the individual's absence or inability to act prevented compliance; how expensive it would have been to comply without the absent individual; whether and how other business operations and obligations were affected; how quickly and prudently a replacement for the absent individual was selected or other arrangements for compliance were made; and how quickly a replacement for the absent individual took appropriate action.

(b) *A fire or other casualty or natural disaster destroyed relevant records or prevented compliance in some other way.* We consider such factors as the following: The nature of the event; how close the event was to the deadline that was missed; how the event caused the failure to pay the premium; whether other efforts were made to get needed information; how expensive it would have been to comply; and how you responded to the event.

(c) *You reasonably relied on erroneous oral or written advice given by a PBGC employee.* We consider such factors as the following: Whether there was a clear relationship between your situation and the advice sought; whether you provided the PBGC employee with adequate and accurate information; and whether the surrounding circumstances should have led you to question the correctness of the advice or information provided.

(d) *You were unable to obtain information, including records and calculations, needed to comply.* We consider such factors as the following: What information was needed; why the information was unavailable; when and how you discovered that the information was not available; what attempts you made to get the information or reconstruct it through other means; and how much it would have cost to comply.

§ 25 What are some situations that might justify a partial "reasonable cause" waiver?

(a) Assume that a fire destroyed the records needed to compute a premium payment. If in the exercise of ordinary business care and prudence it should take you one month to reconstruct the records and pay the premium, but the payment was made two months late, it might be appropriate to waive that part of the premium penalty attributable to the first month the payment was late, but not the part attributable to the second month.

(b) Assume that a plan administrator underpaid the plan's flat-rate premium because of reasonable reliance on erroneous advice from a PBGC employee, and also underpaid the plan's variable-rate premium because the plan actuary used the wrong interest rate. A PBGC audit revealed both errors. PBGC billed the plan for a premium penalty of \$5,000—\$1,000 for underpayment of the flat-rate premium and \$4,000 for underpayment of the variable-rate premium. The plan administrator requested a waiver of the premium penalty. While the erroneous PBGC advice constituted reasonable cause for underpaying the flat-rate premium, there was no showing of reasonable cause for the error in the variable-rate premium. Therefore, we would waive only the part of the premium penalty based on underpayment of the flat-rate portion of the premium (\$1,000).

Procedures

[Reserved.]

Issued in Washington, DC, this 13th day of November, 2006.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this interim final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E6-19436 Filed 11-16-06; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD-2006-OS-0209]

RIN 0720-AB02

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2006; TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: The Department is publishing this interim final rule to implement section 713 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA for FY06), Public Law 109-163. Specifically, that legislation expands the eligibility for survivor benefits under the TRICARE Dental Program (TDP) to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: This rule is effective November 17, 2006.

Comments: Written comments received at the address indicated below by January 16, 2007 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681-0039.

SUPPLEMENTARY INFORMATION: