rulemaking action will not have a significant effect upon the environment as it does not affect the present method of manufacturing motorcycle headlamps.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Under 49 U.S.C. 30163, a procedure is set forth for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority section continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by adding new paragraph S7.9.6 and by revising the subheading of Table IV, and the entry for Headlamps in Table IV to read as set forth below:

S7.9.6 A headlamp system shall be installed on a motorcycle in accordance with the requirements of this paragraph.

S7.9.6.1 The headlamp system shall be located on the front of the motorcycle.

S7.9.6.2 (a) If the system consists of a single headlamp, it shall be mounted on the vertical centerline of the motorcycle. If the headlamp contains more than one light source, each light source shall be mounted on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height. If the light sources are horizontally disposed about the vertical centerline, the distance between the closest edges of the effective projected luminous lens area in front of the light sources shall not be greater than 200 mm (8 in.).

(b) If the system consists of two headlamps, each of which provides both an upper and lower beam, the headlamps shall be mounted either at the same height and symmetrically disposed about the vertical centerline or mounted on the vertical centerline. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas shall not be greater than 200 mm (8 in.).

(c) If the system consists of two headlamps, one of which provides an upper beam and one of which provides the lower beam, the headlamps shall be located on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas shall not be greater than 200 mm (8 in.).

* * * * *

TABLE IV—LOCATION OF REQUIRED EQUIPMENT

[All Passenger Cars and Motorcycles, and Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses of Less than 80 (2032) Inches (MM) Overall Width]

Item	Location on—		
	Passenger cars, multipurpose passenger vehicles, trucks, trailers, and buses	Motorcycles	Height above road surface measured from center of item on vehicle at curb weight
Headlamps	On the front, each headlamp providing the lower beam, at the same height, 1 on each side of the vertical centerline, each headlamp providing the upper beam, at the same height, 1 on each side of the vertical centerline, as far apart as practicable. See also S7.	See S7.9	Not less than 22 inches (55.9 cm) nor more than 54 inches (137.2 cm).

* * * * *

Issued on: August 4, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–21285 Filed 8–7–98; 8:45 am]

BILLING CODE 4910–59–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Part 1609

RIN 3206–AI27

Prohibition of ''Gag Clauses'' in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule making.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation amending the Federal Employees Health Benefits Acquisition Regulations (FEHBAR) to prohibit health benefit carriers participating in the Federal Employees Health Benefits (FEHB) Program from entering into contracts or employment agreements with health care providers, provider groups, or health care workers that would include provisions or financial incentives that have the effect of limiting or restricting communication of

medically necessary services to FEHB enrollees.

DATES: This regulation is effective on September 9, 1998.

ADDRESSES: Comments should be directed to Abby L. Block, Chief, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606–0004. You may submit comments and data by sending electronic mail (E-mail) to: *MWKASZYN@OPM.Gov*.

SUPPLEMENTARY INFORMATION: On February 20, 1998, the President signed an Executive Memorandum directing the Office of Personnel Management (OPM) to take the necessary steps to bring the FEHB Program into contractual compliance with the Consumer (Patient) Bill of Rights and Responsibilities by no later than year end 1999. The Memorandum specifically directed OPM to propose regulations within 90 days to prohibit practices that restrict physician-patient communications about medically necessary treatment options. OPM's regulation prohibits FEHB participating carriers from placing provisions or financial incentives in contracts with health care providers, provider groups, or health care workers that would limit providers' or health care workers' ability to discuss medically necessary treatment options with Federal enrollees. We are aware that a proposal to enact a ''gag clause'' regulation raises three broad areas of concern regarding: (1) Potential impairment of a health plan's ability to review utilization against appropriate treatment protocols or perform quality assurance functions, (2) potential conflict with providers' or health plan sponsoring organizations' ethical, moral, or religious beliefs, and (3) impact on providers' or workers' ability to discuss non-covered or high cost treatment options. This regulation is not intended to limit a health plan's ability to perform utilization review or perform quality assurance functions, nor is it intended to cause providers, health care workers, or health plan sponsoring organizations to discuss treatment options that they would not ordinarily discuss in their customary course of practice because such options are inconsistent with their professional judgment or ethical, moral or religious beliefs.

The regulation will ensure that providers and health care workers are not inhibited from communicating fully and openly with patients regarding medically necessary treatment options regardless of cost or whether the benefits are covered by their health plan. Simply stated, the amended regulation is intended to remove any contractual impediment to a candid and open physician-patient relationship.

On May 21, 1998, OPM published a proposed regulation in the Federal Register (63 FR 27902). OPM received comments from three private citizens, two FEHB carriers, two medical specialty provider associations, one religious health association, one national organization for women and families, and two trade associations representing health maintenance organizations (HMOs), preferred provider organizations (PPOs), and fee-for-service (FFS) plans. We appreciate the observations and suggestions and have taken them into consideration in developing this final rule. The majority of the comments favored the proposed regulation. We were surprised, however, given our explicit statement of intent, at a few of the reactions that assumed that OPM would interpret the regulation in ways that would clearly be detrimental to the FEHB Program and the people it covers. A number of issues are addressed below.

Seven commenters expressed their support or endorsement of the proposed regulation. One commenter indicated support for the rule because it assured that physicians and other providers participating in the FEHB Program will not be contractually enjoined from providing information on all medically appropriate treatment options. The commenter stated that a health plan's contractual requirements, such as coverage and cost, should not be an impediment to a candid discussion between a physician and patient concerning available, medically appropriate treatment options. One commenter applauded OPM for its work on improving patient care under the FEHB Program. One commenter indicated that he fully supports OPM's efforts to prohibit contractual clauses or incentives that prevent open communication between physicians and patients because he believes that such restrictions violate the most basic of rights in a free society.

One commenter pointed out that, based on his experience in the health care industry, the problem is that HMOs reward physicians for not delivering care or intimidate physicians from providing care that would cost the HMO money. This commenter recommended that sanctions be incorporated into the regulation to prevent health plans from utilizing prohibited contractual clauses. No change has been made to the rule since existing regulations provide OPM with the authority to impose appropriate sanctions for violations, including withdrawal of approval of the carrier to participate in the FEHB Program.

One commenter recommended that the regulation give adequate notice to FEHB carriers of the types of contract clauses that are prohibited. This commenter expressed support for ''gag clause'' prohibitions that prohibit practices, including contract clauses, that restrict patient-provider communications, but stated that there is no compelling reason for prohibiting provider incentive plans in the FEHB Program since enrollees have the remedy of the disputed claims process or can change health plans annually if they find that their plan is limiting their access to medically necessary services. OPM believes that free and open communication between a provider or health care worker and a patient should be a basic right of all FEHB enrollees and should not be a matter left solely to the disputed claims process or be a variable matter for consideration in the enrollment decision making process. Therefore, all carriers under the FEHB Program will be held accountable to the same standard. The regulation has been revised to more specifically indicate the types of contract clauses that are prohibited.

Three commenters expressed a concern that the regulation is broader in scope than required by the Patient Bill of Rights or the President's Executive Memorandum of February 20, 1998, and could be interpreted to prohibit capitation thereby limiting certain carriers' abilities to develop managed care arrangements. Specifically, one commenter thought that the regulation should not address ''incentive plans.'' Another commenter indicated that the regulation could have unintended consequences which could have a significant economic impact if it were interpreted to bar all incentive programs, capitation and withhold agreements in particular, from the FEHB Program. This commenter recommended that OPM allow the use of incentive plans but to adopt substantially the same rules in effect for Medicare to assure that such plans are reasonable. The intent of the OPM regulation is not to bar all incentive plans, capitation, or withhold agreements from inclusion in provider contracts. The intent of the regulation is to ensure that providers and health care workers are not inhibited in any way from communicating fully and openly with patients regarding medically necessary treatment options. OPM did not incorporate the same rules that

Medicare uses in regulating incentive plans since we are not trying to broadly regulate incentive plans, only those specific financial incentives that create an inducement to prevent full and open communication between providers and patients. OPM does not believe it is necessary to replicate the complexity of the Medicare regulation in the FEHB Program in order to meet the goals of the Patient Bill of Rights.

One commenter expressed support for the principle that providers and workers have the ability to communicate fully and openly with patients regarding medically necessary treatment options regardless of cost or plan coverage. However, the commenter cautioned OPM not to interpret the rule to extend beyond communications to regulate broadly compensation arrangements between plans and providers. The commenter also suggested that we include a reference in the preamble that the proposed regulation is not intended to limit the ability of a health plan to operate its quality assurance program. While we believe that the proposed regulation made clear that OPM did not intend to regulate broadly compensation arrangements between plans and providers, we have reiterated that the provision only applies to open communication. The preamble has been revised to specify that the intent of the regulation is not to limit the ability of a health plan to operate its quality assurance program.

One commenter asked that we specify in the regulation that nothing in the regulation should be construed to cause providers or carriers to violate their ethical, moral or religious beliefs. The regulation has been modified accordingly.

One commenter indicated that if OPM believes that an exception for ethical or moral beliefs is necessary, the exception should be available to individuals only and not to health plans or insurance carriers. We have modified the regulation so that the exception for ethical, moral, or religious beliefs applies only to providers, health care workers, or health plan sponsoring organizations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program. Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Part 1609

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble OPM is amending 48 CFR Part 1609 as follows:

PART 1609—[AMENDED]

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1. The authority citation for 48 CFR Part 1609 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In § 1609.7001 new paragraph (c)(7) is added to read as follows:

§ 1609.7001 Minimum Standards for Health Benefits Carriers

* * * * *

(c) * * *

(7) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the FEHB Program. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services. Providers, health care workers, or health plan sponsoring organizations are not required to discuss treatment options that they would not ordinarily discuss in their customary course of practice because such options are inconsistent with their professional judgment or ethical, moral or religious beliefs.

[FR Doc. 98–21498 Filed 8–6–98; 2:53 pm]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. NHTSA 98–4274]

RIN 2127–AH32

Replaceable Light Source Information; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment; final rule.

SUMMARY: This document amends part 564 and Federal Motor Vehicle Safety Standard No. 108 in part 571 to remove the references to Docket No. 93–11 and add new Docket No. NHTSA 98–3397, which has been established to receive manufacturers' information on replaceable light sources. This action reflects an internal change to NHTSA's docket management system.

DATES: The final rule is effective August 10, 1998.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: Pursuant to 49 CFR Part 564, *Replaceable Light Source Information*, manufacturers of replaceable light sources used in motor vehicle headlighting systems are required to submit to NHTSA certain dimensional, electrical specification and marking/designation information. Heretofore, section 564.5(a) has required this information to be submitted to the Associate Administrator, Safety Performance Standards, NHTSA, attention: Docket No. 93–11. There are also cross references to Docket No. 93–11 in Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment* (49 CFR 571.108).

NHTSA has rearranged its docket system to accord with the electronic system adopted by the Department of Transportation. A new docket has been established to receive the information on replaceable light sources previously submitted to Docket No. 93–11. The number of this new docket is Docket NHTSA 98–3397. It is therefore necessary to amend Part 564 and Standard No. 108 to reflect the change in docket numbers. Henceforth, submittals should be addressed ''attention: Docket No. NHTSA 98–3397, Part 564—Replaceable Light Source Information.''