V. Regulatory Flexibility Act Certification

67. The Regulatory Flexibility Act of 1980 (RFA) [52] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.*, planning authorities, reliability coordinators, transmission planners and transmission operators, to which the requirements of this rule would apply do not fall within the definition of small entities.[53]

68. As indicated above, based on available information regarding NERC's compliance registry, approximately 250 entities will be responsible for compliance with the three new Reliability Standards. It is estimated that one-third of the responsible entities, about 80 entities, would be municipal and cooperative organizations. The proposed Reliability Standards would apply to planning authorities, transmission planners, transmission operators and reliability coordinators, which tend to be larger entities. Thus, the Commission believes that only a portion, approximately 30 to 40 of the municipal and cooperative organizations to which the proposed Reliability Standards would apply, qualify as small entities.[54] The Commission does not consider this a substantial number. Moreover, as discussed above, the proposed Reliability Standards will not be a burden on the industry since most if not all of the applicable entities currently perform SOL calculations and the proposed Reliability Standards will simply provide a common methodology for those calculations. Accordingly, the Commission certifies that the proposed Reliability Standards will not have a significant adverse impact on a substantial number of small entities.

69. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Comment Procedures

70. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 19, 2007. Comments must refer to Docket No. RM07–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

71. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

72. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

73. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

74. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

75. User assistance is available for eLibrary and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[52] 5 U.S.C. 601–612.

[53] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2000). According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

[54] According to the DOE's Energy Information Administration (EIA), there were 3,284 electric utility companies in the United States in 2005, and 3,029 of these electric utilities qualify as small entities under the SBA definition. Among these 3,284 electric utility companies are: (1) 883 cooperatives of which 852 are small entity cooperatives; (2) 1,862 municipal utilities, of which 1842 are small entity municipal utilities; (3) 127 political subdivisions, of which 114 are small entity political subdivisions; and (4) 219 privately owned utilities, of which 104 could be considered small entity private utilities. *See* Energy Information Administration Database, Form EIA–861, Dept. of Energy (2005), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[FR Doc. E7–16253 Filed 8–17–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–148393–06]

RIN 1545–BG12

Medical and Accident Insurance Benefits Under Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 402(a) of the Internal Revenue Code (Code) regarding the tax treatment of payments by qualified plans for medical or accident insurance. These regulations would affect administrators of, participants in, and beneficiaries of qualified retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for December 6, 2007, at 10 a.m., must be received by November 15, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148393–06), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148393–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or send electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148393–06). The public hearing will be held in

the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela R. Kinard (202) 622–6060; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 402(a) of the Code, as well as conforming amendments under sections 72, 105, 106, 401, 402(c), 403(a), and 403(b).

Section 104(a)(3) provides, in general, that gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness. This exclusion does not apply to amounts attributable to (and not in excess of) deductions allowed under section 213 for any prior taxable year, or to other amounts received by an employee to the extent such amounts either are attributable to contributions by the employer that were not includible in the gross income of the employee or are paid by the employer.

Section 105(a) provides that, except as otherwise provided, amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee or (2) are paid by the employer.

Section 105(b) generally provides that, except in the case of amounts attributable to deductions allowed under section 213 for any prior taxable year, gross income does not include amounts referred to in section 105(a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care of the taxpayer and his or her spouse or dependents.

Section 106 provides that the gross income of an employee does not include employer-provided coverage under an accident or health plan. Section 1.106–1 provides that the gross income of an employee does not include contributions that the employer makes to an accident or health plan for compensation (through insurance or a separate trust or fund) for personal injuries or sickness to the employee or the employee's spouse or dependents.

Section 7702B(a)(1) provides that, for purposes of the Code, a qualified long-term care insurance contract is treated as an accident and health insurance contract.

Section 213 generally allows a deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his or her spouse, and dependents, to the extent that the expenses exceed 7.5 percent of the taxpayer's adjusted gross income. Section 213(d)(1) provides that the term ''medical care'' includes amounts paid for insurance covering medical care (including eligible long-term care premiums with respect to qualified long-term care insurance contracts).

Section 401(a) sets forth requirements for a trust forming part of a pension, profit-sharing, or stock bonus plan to be qualified under section 401(a).

Section 401(h) provides that a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents only if certain enumerated conditions are met. Those conditions include: (1) The aggregate actual contributions for medical benefits (when added to actual contributions for life insurance protection under the plan) may not exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established; (2) a separate account must be established and maintained for such benefits; (3) the employer's contributions to the separate account must be reasonable and ascertainable; (4) it must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits; (5) any amount remaining after satisfaction of all liabilities must, under the terms of the plan, be returned to the employer; and (6) special limitations for the accounts of key employees must be satisfied.

Section 402(a) provides, in general, that any amount actually distributed by a qualified plan is taxable under section 72 in the taxable year in which distributed.

Section 72(a) provides that, except as otherwise provided, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract. Sections 72(d) and (e) provide rules for determining the portion of any distribution that is not includable in gross income as a recovery of a participant's investment in the contract (generally the amount of the unrecovered after-tax employee contributions) under a qualified employer retirement plan.

Section 402(l), added by section 845(a) of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06), provides a limited exclusion from gross income for distributions from an eligible retirement plan used to pay health or long-term care insurance premiums of an eligible retired public safety officer to the extent that the aggregate amount of the distributions for the taxable year is not in excess of the qualified health insurance premiums of the retired public safety officer and his or her spouse or dependents. The total amount excluded from gross income pursuant to section 402(l) shall not exceed $3,000.

Section 1.72–15 provides rules relating to the tax treatment of amounts paid from an employer-established plan to which section 72 applies and which provides for distributions of accident or health benefits. With respect to benefits that are attributable to employer contributions, § 1.72–15(d) provides that any amount received as an accident or health benefit is includible in gross income, except to the extent excludable from gross income under section 105(b) (relating to reimbursements of medical care expenses as defined in section 213(d)).[1] Section 1.72–15(e) provides that the taxability of benefits that are not accident or health benefits is determined under section 72 without regard to any exclusion under section 104 or 105.

Section 1.401–1(b)(1)(i) provides that a plan is not a pension plan within the meaning of section 401(a) if it provides for the payment of benefits not customarily included in a pension plan such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses (except for medical benefits described in section 401(h)). See § 1.401(a)–1(b)(1)(ii).

Section 1.401–1(b)(1)(ii) provides that a profit-sharing plan within the meaning of section 401(a) is primarily a plan of deferred compensation, but that amounts allocated to the account of a

[1] Section 1.72–15(d) also refers to benefits excludible under section 105(c) (relating to certain payments unrelated to absence from work) or 105(d), which was repealed in 1983 (and which related to certain disability payments).

participant may be used to provide incidental life or accident or health insurance for the participant and the participant's family. Section 1.401–1(b)(1)(iii) provides that a stock bonus plan is a plan established and maintained by the employer to provide benefits similar to those of a profit-sharing plan.

Rev. Rul. 61–164 (1961–2 CB 99), see § 601.601(d)(2) of this chapter, holds that a profit-sharing plan does not violate the incidental benefit rule in § 1.401–1(b)(1)(ii) merely because, in accordance with the terms of the plan, each participant's account under the plan is charged with the cost of health insurance for the participant under group hospitalization insurance for the employer's employees, provided that the total amount used for life or accident or health insurance for the employee and the employee's family is incidental. The ruling concludes that such insurance is treated as incidental if the amount expended does not exceed 25 percent of the funds allocated to a participant's account that have not been accumulated for the period prescribed by the plan for the deferment of distributions. The ruling also concludes that the use of profit-sharing plan funds to pay for medical insurance for a participant and his or her beneficiary is a distribution within the meaning of section 402.

Rev. Rul. 73–501 (1973–2 CB 127), see § 601.601(d)(2) of this chapter, applies the incidental benefit rule to the purchase of life insurance by a profit-sharing plan. The ruling states that ''[u]nder a qualified profit-sharing plan, the use of trust funds to pay the cost of life, accident, or health insurance for an employee is a distribution within the purview of section 402 of the Code.''

Rev. Rul. 2003–62 (2003–1 CB 1034), see § 601.601(d)(2) of this chapter, concludes that amounts distributed from a qualified retirement plan that the distributee elects to have applied to pay health insurance premiums under a cafeteria plan are includible in the distributee's gross income. The ruling also holds that the same conclusion applies where amounts distributed from the plan are applied directly to reimburse medical care expenses incurred by a participant.

Rev. Rul. 2005–55 (2005–2 CB 284), see § 601.601(d)(2) of this chapter, holds that a profit-sharing plan that provides a sub-account which permits distributions only for the purpose of reimbursing the participant for substantiated medical expenses imposes conditions on the entitlement of the participant to amounts held in the sub-account and, as a result of the conditions, does not meet the nonforfeitability requirements of section 411.

Explanation of Provisions

The proposed regulations would clarify that a payment from a qualified plan for an accident or health insurance premium generally constitutes a distribution under section 402(a) that is taxable to the distributee under section 72 in the taxable year in which the premium is paid. The taxable amount generally equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant will be treated as first being allocated to the participant and then charged against the participant's benefits under the plan, so that the amount of the distribution is the same as determined under the preceding sentence.

These regulations would also provide that a distribution for the payment of the premiums by a qualified plan generally is not excluded from gross income under section 104, 105, or 106, but such distribution would constitute an amount paid for accident or health insurance under section 213. Furthermore, to the extent that the payment of premiums for accident or health insurance has been treated as a distribution from a qualified plan, amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan.

A related issue is whether the purchase of accident and health insurance can be treated as if the trust merely purchased an investment under which an insurer's payments for medical expenses are made to the trust and then treated as a return on that investment. The proposed regulations would clarify that payments from accident or health insurance for medical expenses that are made to the trust (rather than made to the medical service provider or the participant as reimbursement for covered expenses) are treated as having been made to the participant and then contributed by the participant to the plan. Comments are requested on whether there should be limited exceptions to this general rule (such as an exception for a provision that has the effect of a waiver of premium in the case of disability).

The proposed regulations would not alter the incidental benefit rule of § 1.401–1(b)(1)(ii) (which provides that a profit-sharing plan may provide incidental life or accident or health insurance for the participant and the participant's family) nor would they alter the tax treatment of the payment of life insurance. For the tax treatment of payments for life insurance, see section 72(m)(3) and § 1.72–16.

The general rule that accident and health insurance premiums are taxable distributions would not apply to amounts held under a medical account that satisfies all the requirements of section 401(h). Accident or health insurance purchased through a section 401(h) account does not constitute a taxable distribution. See § 1.72–15(h), providing that employer contributions to provide medical benefits in section 401(h) under a qualified plan or annuity are not includible in the gross income of the employee on whose behalf contributions were made.[2] The result is the same if the section 401(h) account is funded with a transfer from a qualified pension plan in accordance with section 420. Similarly, section 402(l), as added by PPA '06, permits an exclusion from gross income, up to $3,000 annually, for distributions paid directly to an insurer to purchase accident or health insurance or qualified long-term care insurance for an eligible retired public safety officer and his or her spouse or dependents. The existence of narrow exceptions for retiree medical benefits under section 401(h) and for distributions for the payment of premiums on behalf of eligible retired public safety officers under section 402(l) is consistent with a general rule for inclusion in gross income of the payments of premiums for accident and health insurance.

Section 402(a) provides that amounts actually distributed from a qualified plan are generally taxable to the distributee in the year of the distribution. There is no general exception in section 402 for a distribution in the form of accident or health insurance.[3] Moreover, Congress

[2] See also H.R. Rep. No. 2317, 87th Cong., 2nd Sess. at 4 (1962), stating that no part of the contributions paid by the employer to a section 401(h) account will be taxed currently to the employee.

[3] See, for example, the Joint Committee on Taxation's Technical Explanation, Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006'' as passed by the House on July 28, 2006, and Considered by the Senate on August 3, 2006 (JCX–38–06), August 3, 2006, 109th Cong., 2nd Sess. 244 (2006), relating to the exception under section 402(l), which states that, under present law, distributions from a qualified plan are generally

Continued

has carefully prescribed and strictly limited the ability to pre-fund accident and health insurance benefits on a tax-favored basis. The rules specifically prescribed by Congress relating to the pre-funding of future health benefits on a tax-favored basis include the rules in section 223 (providing contribution limits and distribution rules for health savings accounts (HSAs)); sections 419 and 419A (limiting employer deductions for contributions to welfare benefit funds); section 501(c)(9) (providing requirements for tax-exempt Voluntary Employee Beneficiary Associations (VEBAs)); section 512 (providing for the taxation of a VEBA's unrelated business income); and by sections 401(h) and 420 (governing retiree health benefits provided through a separate health benefits account that is part of a pension or annuity plan). Therefore, because Congress specifically prescribed these limited provisions for favorable tax-treatment, a broad exclusion permitting tax-favored treatment of any distribution used to pay accident or health insurance premiums would be inconsistent with this intentional statutory scheme.

In addition, the existence of the incidental benefit rule in § 1.401–1(b)(1)(ii) is not an indication that distributions used to provide incidental life or accident or health insurance benefits are eligible for tax-favorable treatment because the incidental benefit rule relates solely to the qualification of a profit-sharing plan, not to the tax treatment of amounts used to provide medical or accident insurance benefits under such plan.

The proposed regulations also contain conforming amendments to the Income Tax Regulations under sections 72, 105, 106, 401, and 402(c). These conforming amendments would remove obsolete provisions, as well as cite to the rules in these proposed regulations for determining the tax treatment of the payment of premiums for accident and health insurance from a qualified plan. Conforming amendments under sections 403(a) and 403(b) would also add a cross-reference to the regulations under section 403(a) and section 403(b) that would apply the rules in these proposed regulations to those arrangements. In addition, the proposed regulations would revise the first sentence of § 1.106–1 in order to update the definition of dependent in light of section 207 of the Working Families Tax Relief Act of 2004, Public Lic 108–311 (118 Stat. 1166) and Notice 2004–79 (2004–2 CB 898), see § 601.601(d)(2). The proposed regulations would also amend § 1.402(c)–2, Q&A–4 to add distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1) to the list of items that are not eligible rollover contributions. Finally, these proposed regulations would also include a cross-reference to section 402(l), as added by PPA '06. For additional guidance on section 402(l), see Notice 2007–7 (2007–5 IRB 395), see § 601.601(d)(2).

included in gross income (subject to exceptions for investment in the contract and qualified distributions from a designated Roth account).

Proposed Effective Date

It is expected that the regulations will apply for calendar years after the publication of final regulations in the **Federal Register**. However, no inference should be drawn that the payment of premiums from a qualified plan does not constitute a taxable distribution if made prior to the effective date of these regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 6, 2007, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by November 19, 2007 and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by November 15, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Pamela R. Kinard and Michael P. Brewer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.72–15 is amended by:

1. Revising paragraphs (d), (h), and (i).
2. Removing and reserving paragraph (f).

The revisions read as follows:

§ 1.72–15 Applicability of section 72 to accident or health plans.

* * * * *

(d) *Accident or health benefits attributable to employer contributions.* Any amounts received as accident or health benefits and not attributable to contributions of the employee are includible in gross income except to the extent that such amounts are excludable from gross income under section 105(b) or (c) and the regulations thereunder.

See § 1.402(a)–1(e) for rules relating to the use of a qualified plan under section 401(a) to pay premiums for accident or health insurance.

* * * * *

(h) *Medical benefits for retired employees, etc.* See § 1.402(a)–1(e)(2) for rules relating to the payment of medical benefits described in section 401(h) under a qualified pension or annuity plan.

(i) *Special rules*—(1) *In general.* For purposes of section 72(b) and (d), and this section, the taxpayer shall maintain such records as are necessary to substantiate the amount treated as an investment in the taxpayer's annuity contract.

(2) *Delegation to Commissioner.* The Commissioner may prescribe a form and instructions with respect to the taxpayer's past and current treatment of amounts received under section 72 or 105, and the taxpayer's computation, or recomputation, of the taxpayer's investment in his or her annuity contract. This form may be required to be filed with the taxpayer's returns for years in which such amounts are excluded under section 72 or 105.

§ 1.105–4 [Removed]

Par. 3. Section 1.105–4 is removed.

§ 1.105–6 [Removed]

Par. 4. Section 1.105–6 is removed.

Par. 5. Section 1.106–1 is amended by revising the first sentence and adding a new sentence at the end of the paragraph to read as follows:

§ 1.106–1 Contributions by employer to accident and health plans.

The gross income of an employee does not include the contributions which the employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, or the employee's dependents (as defined in section 152 determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)). * * *

For the treatment of the payment of premiums for accident or health insurance from a qualified trust under section 401(a), see §§ 1.72–15 and 1.402(a)–1(e).

Par. 6. Section 1.401–1 is amended by adding a new sentence at the end of paragraph (b)(1)(ii) to read as follows:

§ 1.401–1 Qualified pension, profit-sharing, and stock bonus plans.

* * * * *

(b) * * * (1)(i) * * *

(ii) * * * See §§ 1.72–15, 1.72–16, and 1.402(a)–1(e) for rules regarding the tax treatment of incidental life or accident or health insurance.

* * * * *

Par. 7. Section 1.402(a)–1 is amended by removing the last two sentences of paragraph (a)(1)(ii) and adding a new sentence in their place and by adding a new paragraph (e) to read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) * * *

(1) * * *

(i) * * *

(ii) * * * Paragraph (e) of this section provides rules relating to use of a qualified pension, annuity, profit sharing, or stock bonus plan to provide accident or health benefits or coverage otherwise described in section 104, 105, or 106.

* * * * *

(e) *Medical, accident, etc. benefits paid from a qualified pension, annuity, profit sharing, or stock bonus plan*—(1) *Payment of premiums*—(i) *General rule.* The payment of premiums from a qualified trust for accident or health insurance, including a qualified long-term care insurance contract under section 7702B, constitutes a distribution under section 402(a) to the participant against whose benefit the premium is charged. The amount of the distribution equals the amount of the premium charged against the participant's benefits under the plan. If a defined contribution plan pays these premiums from a current year contribution or forfeiture that has not been allocated to a participant's account, then the amount of the premium for each participant will be treated as first being allocated to the participant and then charged against the participant's benefits under the plan, so that the amount of the distribution is treated in the same manner as determined under the preceding sentence. Except as described in paragraphs (e)(2) and (3) of this section, a distribution described in this paragraph (e)(1) is not excludable from gross income.

(ii) *Treatment of amounts received through accident or health insurance.* To the extent that the premium for accident or health insurance constitutes a distribution under this paragraph (e)(1), amounts received through accident or health insurance are neither attributable to contributions by the employer which are not includible in the gross income of the employee nor are such amounts paid by the employer. Accordingly, amounts received through the accident or health insurance for personal injuries or sickness are excludable from gross income under section 104(a)(3) and are not treated as distributions from the plan. If amounts received through accident or health insurance are paid to the plan instead of the employee, these amounts are treated as having been paid to the employee and then contributed by the employee to the plan (and these amounts must satisfy the qualification requirements applicable to employee contributions).

(2) *Medical benefits for retired employees provided under an account described in section 401(h).* The payment of medical benefits described in section 401(h) under a pension or annuity plan is treated in the same manner as a payment of accident or health benefits attributable to employer contributions, or employer-provided coverage under an accident or health plan. See § 1.401–14(a) for the definition of medical benefits described in section 401(h). Accordingly, amounts applied for the payment of accident or health benefits, or for the payment of accident or health coverage, from a section 401(h) account are not includible in the gross income of the participant on whose behalf such contributions are made to the extent they are excludible from gross income under section 104, 105, or 106.

(3) *Distributions to eligible retired public safety officers.* See section 402(l) for a limited exclusion from gross income for distributions used to pay for certain accident or health premiums (including premiums for qualified long-term care insurance contracts). This limited exclusion applies to eligible retired public safety officers, as defined in section 402(l)(4)(B).

(4) *Effect of making a distribution of insurance premiums on qualification.* See § 1.401–1(b)(1) for rules concerning the types and amount of medical coverage and benefits that are permitted to be provided under a plan that is part of a trust described in section 401(a). For example, § 1.401–1(b)(1)(ii) provides that a profit-sharing plan is primarily a plan of deferred compensation, but the amounts allocated to the account of a participant may be used to provide incidental accident or health insurance for the participant and the participant's family. See also, section 401(k)(2)(B) for certain restrictions on the distribution of elective contributions.

(5) *Application of this paragraph (e).* This paragraph (e) applies to the payment of premiums charged against the benefits of a beneficiary or an alternate payee in the same manner as the payment of premiums charged against the account of a participant.

(6) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts.* Employer sponsors a profit-sharing plan qualified under section 401(a). The plan provides solely for non-elective employer profit-sharing contributions. The plan's trustee enters into a contract with a third-party insurance carrier to provide health insurance for certain plan participants. The insurance policy provides for the payment of medical expenses incurred by those participants. The plan limits the amounts used to provide medical benefits with respect to a participant to 25 percent of the funds held in the participant's account. The trustee makes monthly payments of $1,000 to pay the premiums due for Participant A's health insurance. The trustee also reduces Participant A's account balance by $1,000 at the time of each premium payment. In June of a year, Participant A is admitted to the hospital for covered medical care, and in July of the same year, the health insurer pays the hospital $5,000 for the medical care provided to Participant A in June.

(ii) *Conclusion.* Under paragraph (e)(1) of this section, each of the trustee's payments of the $1,000 constitutes a distribution under section 402(a) to Participant A on the date of each payment. To the extent provided under section 213, the amount of these distributions constitutes payments for medical care. The $5,000 payment to the hospital is excludable from Participant A's gross income under section 104(a)(3) and is not treated as a distribution from the plan.

Par. 8. Section 1.402(c)–2 is amended by redesignating paragraph A–4(h) as paragraph A–4(i) and adding a new paragraph A–4(h) to read as follows:

§ 1.402(c)–2 Eligible rollover contributions; questions and answers.

* * * * *

A–4: * * *

(h) Distributions of premiums for accident or health insurance under § 1.402(a)–1(e).

* * * * *

Par. 9. Section 1.403(a)–1 is amended by revising paragraph (g) to read as follows:

§ 1.403(a)–1 Taxability of beneficiary under a qualified annuity plan.

* * * * *

(g) The rules of § 1.402(a)–1(e) apply for purposes of determining the treatment of amounts paid to provide accident and health insurance benefits.

Par. 10. Section 1.403(b)–6 is amended by adding a sentence following the first sentence of paragraph (g) to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(g) *Death benefits and other incidental benefits.* * * * The rules of § 1.402(a)–1(e) apply for purposes of determining when incidental benefits are treated as distributed and included in gross income. See §§ 1.72–15 and 1.72–16. * * *

* * * * *

Linda E. Stiff,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–16084 Filed 8–17–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 5

Office of the Secretary

43 CFR Part 5

Fish and Wildlife Service

50 CFR Part 27

RIN 1024–AD30

Making Motion Pictures, Television Productions, Soundtracks or Taking Still Photographs on Certain Areas Under the Jurisdiction of the Department of the Interior

AGENCY: National Park Service, Office of the Secretary, Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (DOI) proposes to revise its filming regulations to implement legislation that directs establishment of reasonable fees for commercial filming activities or similar projects, such as still photography, and to respond to applicants for commercial filming or still photography permits in a timely manner.

DATES: Written comments will be accepted through October 19, 2007.

ADDRESSES: You may submit comments, identified by the number 1024–AD30, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

—Mail: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240, telephone: 202–513–7092, or e-mail: *Lee_Dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION: Public Law 106–206 (codified at 16 U.S.C. 460*l*–6d) directs the Secretaries of the Interior and Agriculture to establish a reasonable fee system (location fees) for commercial filming and still photography activities on lands under the Secretaries' jurisdiction. The law necessitates that the Department of the Interior (DOI) revise the existing regulations at 43 CFR part 5 prohibiting the National Park Service and the Fish and Wildlife Service from collecting fees for commercial film productions. When finalized, this proposed regulation will be the primary regulation governing commercial filming and still photography activities for the following DOI agencies: The Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS). While 16 U.S.C. 460*l*–6d authorizes agencies of the DOI to collect location fees, to date only the BLM, FWS, and NPS have decided to proceed with regulations allowing the agencies to collect and retain location fees. If in the future additional DOI agencies decide to collect location fees, then this regulation may be adopted by those agencies without significant modification.

Background

Lands of the United States were set aside by Congress and Executive order or otherwise acquired to conserve and protect areas of untold beauty and grandeur, historical importance, and uniqueness for future generations. Often it is the uniqueness of the land that attracts filmmakers. This tradition started with explorers who traveled with paint and canvas or primitive photo apparatus before the areas were designated as a national park, refuge, or forest. Generally, land management agencies allow commercial filming and still photography when it is consistent with their mission and will not harm the resource or interfere with the visitor experience.

While many commercial filming and still photography permits issued by the land management agencies are for small productions involving educational material or commercial advertising, a significant number of commercial filming permits have been issued to makers of major motion pictures.

Public Law 106–206 augments previous statutes authorizing commercial filming and still photography permits and establishes limitations for filming activities. While commercial filming and still photography are activities generally allowed on Federal lands, in many circumstances it is in the Government's interest to manage the activity through a permitting process to minimize the