phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

§ 255.7 Future Proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

§ 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

Dated: December 18, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–34027 Filed 12–23–98; 8:45 am]

BILLING CODE 1410–33–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. A99–1; Order No. 1222]

Appeal of Post Office Closing

AGENCY: Postal Rate Commission.

ACTION: Notice of Docket No. A99–1.

SUMMARY: This document addresses matters related to the establishment of a docket to consider an objection to the closing of an Encinitas, CA post office. It identifies likely legal issues and establishes a procedural schedule.

DATES: See Supplementary Information section for dates.

ADDRESSES: Correspondence should be addressed to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789–6820.

SUPPLEMENTARY INFORMATION: On December 16, 1998, the Commission issued a notice and order (No. 1222) accepting an appeal (as Docket No. A99–1) and establishing a procedural schedule under 39 U.S.C. 404(b)(5). The affected post office is Encinitas, CA 92024. The name of the petitioner is Ida Lou Coley. The petitioner objects to the closing of the referenced post office. Petitioner filed the appeal on November 18, 1998. The categories of issues apparently raised are the effect on the community [39 U.S.C. 404(b)(2)(A)] and the effect on postal services [39 U.S.C. 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

Scheduling matters. The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). The procedural schedule has been developed to accommodate the Commission's delay in publication of the initial notice and order in this docket. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioner. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioner or the Postal Service for more information.

The Commission orders the Postal Service to file the record in this appeal by December 23, 1998. Additonal dates in the procedural schedule (apart from those noted elsewhere in this notice) are: January 4, 1999: last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)]; January 14, 1999 (petitioner's participant statement or initial brief [*see* 39 CFR 3001.115(a) and (b)]); February 3, 1999: Postal Service's answering brief [*see* 39 CFR 3001.115(c)]; February 17, 1999: petitioner's reply brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)]; February 24, 1999: deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]; March 18, 1999: expiration of Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

Dated: December 17, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–33927 Filed 12–23–98; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–2; Order No. 1223]

Revisions to Library Reference Rule; Further Changes

AGENCY: Postal Rate Commission.

ACTION: Supplementary notice of proposed rule.

SUMMARY: This document addresses comments on the PRC's initial proposed revisions to rules on the use of library references. It also presents another set of revisions for comment. The revisions are intended to improve administrative aspects of the library reference practice.

DATES: File comments by February 1, 1999.

ADDRESSES: Send comments on this proposal to Margaret P. Crenshaw, Secretary of the Commission, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC, 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 8, 1998, the Commission published Order No. 1219 in the **Federal Register** [63 FR 47456] setting forth proposed revisions to rule 31(b). The proposal addressed administrative aspects of the library reference practice. The Commission received eight sets of comments on the proposal. The comments are available

for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov.

Background

The order initiating this rulemaking noted that longstanding provisions in the Commission's rules of practice allow participants to designate material as a library reference and file it for public inspection in the Commission's docket section, in lieu of providing the material to the entire service list. *See generally* rule 31(b) (effectively adopted as special rule 5 in Docket No. R97–1). The participant submitting the library reference generally serves a notice to that effect on the Commission and all other participants. The contents of these notices vary, but generally are subject, at a minimum, to the requirements of rule 11.

One rationale advanced in support of this practice is that it eliminates the considerable burden and expense associated with copying and providing voluminous material to every participant on the service list. Another reason is that it facilitates reference to, or identification of, material that may be of interest to only a few participants, of limited interest to the entire service list, or not easily photocopied or duplicated. Regardless of the underlying rationale that may be invoked, the practice is essentially an administrative convenience for the filing participant, stands as an exception to the Commission's service requirements, and does not confer evidentiary status on the designated material. A participant seeking to have part or all of the material admitted into evidence is expected to satisfy Commission rules related to that step.

Concerns have arisen in recent proceedings that this practice could be employed, either inadvertently or strategically, to insulate material from effective cross-examination, and thereby interfere with participants' due process rights and timely completion of Commission action on Postal Service requests. The amended proposed rule provides a more detailed and specific statement of the somewhat limited circumstances when the submission of material as a library reference is appropriate. It reaffirms that this practice is available essentially to prevent unduly burdening filing participants. Several important questions regarding administration of the rule also have surfaced. One of these is whether accompanying notices provide adequate disclosure of the nature of the filed material. Others include whether the identity of the person responsible for preparation of the material should be disclosed; whether the material is being sponsored and, if so, the sponsor's identity; the relationship to interrogatories, testimony or other documents; and whether admission into evidence will be sought. Questions have also arisen concerning whether the material included in a library reference should be prepared in a manner that meets certain minimum standards of presentation or organization with respect to matters such as executive summaries, pagination, tables of contents, and indices.

Order No. 1219 indicated that the Commission considered proposing comprehensive revisions directed at evidentiary, administrative, and other issues related to the use of library references, but concluded it would be more efficient to issue a narrower rulemaking; therefore, it characterized the proposed revisions as ''a limited update'' to its rule 31, Evidence. It also expressly noted that the changes did not address all of the issues that arose in Docket No. R97–1, and flagged the possibility that in individual cases, special rules governing the use of library references might still be needed.

Should the rulemaking be expanded to address evidentiary concerns? Most commenters tailor their observations to the Commission's stated interest in pursuing relatively narrow improvements in the administration of the library reference practice at this time. Some of these commenters support adoption of the rule essentially as proposed. Other supporters of the overall direction of the rulemaking suggest certain modifications. These include, among other things, adopting the mandatory motion requirement on a trial basis only, or dropping it (either entirely or in most instances) in favor of an expanded notice. Suggested modifications also include clarifying proposed disclosure requirements or expanding them, and making minor changes in the organization of the rule.

Several commenters express concern that the rulemaking's scope is so circumscribed that it does not address fundamental evidentiary questions. Some of these commenters offer certain observations about specific provisions of the proposal, but they nevertheless prefer that the Commission expand the focus and hold a public conference to address the mixed questions of evidence and administration entailed in recent controversies. One of these commenters usefully identifies at least six discrete evidentiary issues not addressed in the proposed rule and suggests, among other things, that it might be more appropriate to consider these issues in the context of the Commission's rules on documentary and foundation materials.

Another commenter (generally supportive of the proposed rule) notes that the revisions do not specifically address sponsorship of institutional responses to interrogatories, and proposes a change to another rule (25(b)) to remedy this. This commenter also proposes, among other things, certain changes to the wording of rules relating to exhibits and surveys, and more explicit recognition of the need for cross-references to related material and a participant's obligation to update these in the course of a proceeding.

The Commission believes Order No. 1219 made clear its recognition that the problems encountered in Docket No. R97–1 raised difficult questions of evidence and administration, and would require serious attention beyond the immediate proposal. It believes its concurrent rulemaking, Docket No. RM98–3, may provide an appropriate vehicle for addressing these broader issues, including those identified in some of the comments submitted here. The Commission also appreciates that enforcement of its rules on the admission of material into evidence, as some commenters have noted, is a critical element in curbing future disputes regarding library references.

Given the concerns expressed about the rulemaking's scope, the Commission has reassessed its original position, but again concludes that it is appropriate to restrict the current rulemaking to largely administrative issues. Within this context, the Commission attempts to strike an appropriate balance in terms of the level of detail required to be provided. It is hoped that as now amended, the proposed rules will be largely noncontroversial, and subject to rapid implementation.

Should submission of a library reference be tied to a formal motion for acceptance, as initially proposed, or dropped in favor of a variation on the existing notice requirement? Under prevailing practice, the requirements that apply to the contents of notices accompanying library references are minimal. Further, deficiencies in meeting them generally are remedied only on an ad hoc basis. To provide more uniformity in the level of detail provided, as well as a formal mechanism for prompt review and assessment of compliance with expanded labeling and disclosure requirements, the Commission proposed that each library reference be accompanied by a motion for acceptance. It recognized that this might

entail some additional effort on the part of the Commission and all interested participants at the time a library reference is filed, but balanced this against the delay and confusion entailed in dealing with complications posed by addressing deficiencies discovered or objected to at a later stage.

Several commenters support the proposal to link the filing of library references to a motion. However, one of these supporters raises concerns about delay, and suggests that the proposed approach be adopted on a trial basis only, and carefully monitored. Another commenter observes that requiring a motion may not be necessary in every instance and could have a chilling effect, at least with respect to secondary sources. This commenter suggests allowing most library references to be filed by means of a notice, with a motion required only when circumstances justify. Opponents of any form of motion practice generally criticize the proposed approach as making the process of filing a library reference more difficult and time-consuming.

Despite varying positions on the motion requirement, the comments as a whole generally indicate consensus on the need for better labeling and disclosure regarding the material in a library reference, as well as its relationship to testimony, interrogatories, and the development of the evidentiary record. To the extent that this information could be provided as easily in an expanded notice as in a motion, the Commission agrees that mandating that library references be accompanied by a motion may not be necessary. Thus, the amended revisions proposed here substitute a notice for a motion, and make conforming changes throughout the text to reflect this revision. In making this change, the Commission emphasizes that the notice under this rule must include broader disclosure than is generally the case now. Therefore, replacement of the mechanism originally proposed—a motion—with a notice is not an endorsement of the status quo in terms of the labeling and description contained therein. The Commission stresses that the success of the notice alternative, especially in terms of avoiding delay, will depend largely on a high level of voluntary compliance on the part of participants filing library references. It also regards the notice mechanism as less clear-cut in terms of providing those who perceive deficiencies in a notice with an established avenue of seeking prompt redress. (One commenter's suggestion that the motion not be considered (ruled upon) unless the proposed labeling and disclosure requirements are met implicitly recognizes this.) Since notices are not ''ruled upon'' in the sense specifically used by this commenter, the commenter's suggested amendment is inapposite. However, this does not alter the Commission's expectation that filing participants will adhere to the spirit as well as the letter of the rule in terms of the completeness of the notices accompanying library reference material.

Should the proposed improvements in required labeling, descriptions, and disclosures be adopted as proposed? As indicated, most commenters agree that better labeling and disclosure would reduce or eliminate many of the administrative problems that have arisen. Several suggest essentially minor changes to clarify the nature and extent of required disclosures. One, for example, asks that the second paragraph of section 31(b)(3) in the initial proposal, which requires the filing party to identify the authors or others materially contributing to the preparation of library references, be modified to require that the party explain why such information is not available, if that is the case. The Commission agrees that this change, as the commenter suggests, would be helpful in circumstances where, for example, computer-generated data are provided in response to an interrogatory, but are not being offered in evidence. Another commenter asks that the rule include a description of what the library reference is and a specific requirement that when a library reference is filed in response to an interrogatory, the interrogatory be identified. The Commission believes that the general disclosures it is requiring can be deemed to include this type of information, but is amending the proposal in the manner suggested in order to remove any doubt.

As indicated above, one commenter suggests addressing certain concerns about institutional responses. The Commission finds that resolution of issues in this area must be postponed. This commenter also seeks more explicit cross-referencing than the rule proposes. The Commission believes the proposal presented here strikes an appropriate balance among the interests of all concerned.

Are filing and service concerns, especially the number and format of copies filed with the Commission and special requests for service, adequately addressed? The proposed rule required that one hard copy and, when possible, one electronic version of the material in the library reference be filed with the Commission. This parallels the current requirement with respect to hard copies and formalizes the growing, but now-voluntary, practice of submitting electronic versions. There was little reaction to the requirement that an electronic version be provided, but to the extent it was mentioned, it garnered support. The version of the rule proposed here retains the requirement related to electronic copies.

As initially proposed, a circumstance that can be invoked for filing a library reference is the likelihood that the material will be of limited interest to the entire service list. This was coupled with a requirement that the filing participant agree to serve the material on individual participants, if so requested. Under the motion practice envisioned in the original proposal, participants interested in receiving actual service of other library reference material would have had a clear opportunity to request this—as early as the when the companion motion was received—so the Commission did not otherwise provide for special requests in its initial proposal.

Two commenters suggest extending the option of special requests for actual service to all library reference material. One suggests that the copy be provided within three days of a request; the other proposes requiring ''prompt'' service, without further specification of a time limit. The Commission appreciates participants' concern about promptly obtaining actual service of all library references of interest to them. However, it also believes that the availability of electronic versions of many library references should reduce, if not eliminate, the need for actual service of much library reference material. It also is concerned about blanket requests for special service, which would undermine the administrative convenience the rule extends to the filing participant. Thus, the Commission does not propose an across-the-board authorization for participants to make special requests for service; however, it amends the provision on actual service that remains in the rule because it finds that the current wording is more open-ended than desirable. Specifically, the Commission proposes requiring, in situations meeting the terms of section 31(b)(2)(i) (A) and (B) proposed here, that the filing participant provide a copy of the requested material within three days or, in the alternative, inform the requesting participant why the material cannot be provided within that timeframe, indicate when the material will be available, and make reasonable efforts to promptly provide the material. The absence of a specific authorization

for special requests in other instances [section 31(b)(2)(i) (A) and (C)–(E)] does not automatically foreclose a participant from making a request. In these situations, the Commission strongly encourages informal cooperation among the parties in addressing special service requests.

Another commenter, citing problems with obtaining prompt access to certain library references, suggests modifying the proposal to require that two copies of each library reference be filed with the Commission. (The Commission assumes that the suggestion regarding filing two copies of each library reference relates to hard copies, rather than to two electronic versions.) The Commission is aware that a requirement of this nature could pose hardships in certain instances, especially on the Postal Service, but is also concerned that participants seeking to review a hard copy could be inconvenienced if there is only one on file at the Commission. The Commission believes requiring participants to file two copies with its docket section strikes an appropriate balance, especially since instances where this poses undue burden or hardship on the filing party can be dealt with through a request for waiver.

In addition, the Commission, on its own initiative, is making a minor editorial revision to clarify that the library reference practice is primarily a convenience to the participant filing the designated material. Specifically, it amends the second paragraph of section 31(b)(2)(i) by substituting the words ''filing participants'' for the term ''participants.'' The Commission believes that the sense of the proposal as a whole makes it clear that the referenced participant is generally the participant filing, or designating, material as a library reference. The Commission also clarifies the timing of the notice by adding the word ''contemporaneous'' in section 31(b)(2)(ii) proposed here.

Should the technical and minor editorial changes suggested by several commenters be made at this time? Several commenters suggest that minor reorganization of the rule (in terms of numbering) could avoid potential confusion. The Commission agrees that subsections (3) through (7) of rule 31(b)—in the initial rulemaking—relate solely to library references, and not to the other types of documents covered by rule 31(b). Since, among other things, the concurrent general review of the rules was expected to require additional organizational changes in the near future, the Commission preliminarily determined to postpone more extensive re-numbering. However, given commenters' concerns about potential confusion, the Commission is re-numbering the section, generally along the lines suggested, with the understanding that further reorganization may be needed, either to conform with future changes or with official publication requirements.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR 3001.31 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662.

2. Amend § 3001.31 by revising paragraph (b) to read as follows:

§ 3001.31 Evidence.

* * * * *

(b) *Documentary material.* (1) *General.* Documents and detailed data and information shall be presented as exhibits. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(2) *Library references.* (i) The term ''library reference'' is a generic term or label that participants and others may use to identify or designate certain documents or things (''material'') filed with the Commission's docket section. The practice of filing a library reference is authorized primarily as a convenience to filing participants and the Commission under certain circumstances. These include:

(A) When the physical characteristics of the material, such as number of pages or bulk, are reasonably likely to render compliance with the service requirements unduly burdensome; and

(B) When interest in the material or things so labeled is likely to be so limited that service on the entire list would be unreasonably burdensome, and the participant agrees to serve the material on individual participants upon request within three days of a request, or to provide, within the same period, an explanation of why the material cannot be provided within three days, and to undertake reasonable efforts to promptly provide the material; or

(C) When the participant satisfactorily demonstrates that designation of material as a library reference is appropriate because the material constitutes a secondary source. A ''secondary source'' is one that provides background for a position or matter referred to elsewhere in a participant's case or filing, but does not constitute essential support and is unlikely to be a material factor in a decision on the merits of issues in the proceeding; or

(D) When reference to, identification of, or use of the material would be facilitated if it is filed as a library reference; or

(E) When otherwise justified by circumstances.

(ii) *Filing procedure.* (A) Participants filing material as a library reference shall provide contemporaneous written notice of this action with the Commission and other participants, in accordance with applicable service rules. Participants shall file two hard copies of the designated material with the Commission's docket section. The notice shall set forth with particularity the reason(s) the material is being designated as a library reference, with reference to paragraph (b)(2)(i) of this section, and

(*1*) Describe what the material consists of or represents;

(*2*) Explain how the material relates to the participant's case or to issues in the proceeding;

(*3*) Indicate whether the material contains a survey or survey results; and

(*4*) Provide a good-faith indication of whether the participant anticipates seeking admission of the material, in whole or in part, into evidence.

(B) The notice shall also identify authors or others materially contributing to the preparation of the library reference, identify the testimony, exhibit, or interrogatory, if applicable, to which the library reference relates, or indicate why this information cannot be identified. If the participant filing the

library reference anticipates seeking to enter all or part of the material contained therein into the evidentiary record, the notice also shall identify portions expected to be entered and the expected sponsor(s).

(iii) *Labels and descriptions.* Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the presiding officer or Commission establishes. In addition, material designated as a library reference shall include a preface or summary addressing the following matters:

(A) The proceeding and document or issue to which the material relates;

(B) The identity of the participant designating the library reference;

(C) The identity of the witness or witnesses who will be sponsoring the material or the reason why a sponsoring witness or witnesses cannot be identified; and, to the extent feasible,

(D) Other library references or testimony that utilize information or conclusions developed therein. In addition, the preface or summary shall explicitly indicate whether the library reference is an update or revision to a library reference filed in another Commission proceeding, and provide adequate identification of the predecessor material.

(iv) *Electronic version.* Material filed as a library reference shall also be made available in an electronic version, absent a showing of why an electronic version cannot be supplied or should not be required to be supplied. The electronic version shall include the same, or similar, information required to be included in the preface or summary.

(v) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section does not confer evidentiary status. The evidentiary status of the material is governed by this section.

* * * * *

Dated: December 17, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–33909 Filed 12–23–98; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

45 CFR Part 60

RIN 0906–AA41

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes amendments to the existing regulations implementing the Health Care Quality Improvement Act of l986, establishing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). The proposed regulations would amend the existing reporting requirements regarding payments on medical malpractice claims or actions in order to include reports on payments made on behalf of those practitioners who provided the medical care that is the subject of the claim or action, whether or not they were named as defendants in the claim or action. These amendments are designed to prevent the evasion of Data Bank medical malpractice payments reporting requirements.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received by February 22, 1999.

ADDRESSES: Written comments should be addressed to Neil Sampson, Acting Associate Administrator, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Research and Planning, BHPr, Room 8–67, Parklawn Building, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–2300.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** on October 17, 1989 (54 FR 42722), regulations implementing the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660 (42 U.S.C. 11101 *et seq.*), through the establishment of the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). Those regulations are codified at 45 CFR part 60.

Among other items of information that must be reported to the Data Bank, section 421 of the Act requires that each entity that makes a payment in settlement or satisfaction of a ''medical malpractice action or claim'' must report certain information ''respecting the payment and circumstances thereof'' (section 421(a)). The information to be so reported includes ''the name of any physician or licensed health care practitioner for whose benefit the payment is made'' (section 421(b)(1)). The term ''medical malpractice action or claim'' is defined for purposes of the Act in section 431(7), to mean—

* * * a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State of the United States seeking monetary damages.

Thus, the Act provides for the reporting, by the payer, of any payment made for the benefit of a health care practitioner resulting from any ''written claim or demand for payment'' based on ''furnishing (or failure to furnish) health care services.''

In implementing this requirement in the regulations published on October 17, 1989, the Secretary included in § 60.7(a), entitled ''*Who must report,*'' language stating that the provision applies to a payer who makes a payment ''for the benefit of'' a health care practitioner

* * * in settlement of or in satisfaction in whole or in part of *a claim or a judgment against such* * * * *health care practitioner* for medical malpractice. [Emphasis added.]

It has come to the Department's attention that there have been instances in which a plaintiff in a malpractice action has agreed to dismiss a defendant health care practitioner from a proceeding, leaving or substituting a hospital or other corporate entity as defendant, at least in part for the purpose of allowing the practitioner to avoid having a report on a malpractice payment made on his or her behalf submitted to the Data Bank. The