

the period January 1, 2001 through December 31, 2005. Accordingly, CMS would not invalidate the election for the 2004 plan year.

(v) *Example 5:* A non-Federal governmental employer has elected to exempt its self-funded plan from certain requirements of this part. An individual terminates employment with the governmental employer, which fails to automatically provide a certificate of creditable coverage within the period specified in §146.115(a)(2)(ii)(A). (The governmental employer generally provides certificates to terminated employees on an automatic basis, but neglected to do so in this case.) The oversight is brought to the employer's attention when the individual inquires as to why he has not received his certificate of creditable coverage. The governmental employer promptly (within 30 days) forwards a certificate to the individual. CMS would not view that situation as constituting a substantial failure and would not invalidate the election under this section.

(j) *Election invalidated.* If CMS finds cause to invalidate an election under this section, the following rules apply:

(1) CMS notifies the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) in writing that CMS has made a preliminary determination that an election is invalid, and states the basis for that determination.

(2) CMS's notice informs the plan sponsor that it has 45 days after the date of CMS's notice to explain in writing why it believes its election is valid. The plan sponsor should provide applicable statutory and regulatory citations to support its position.

(3) CMS verifies that the plan sponsor's response is timely filed as provided under paragraph (d)(3) of this section. CMS will not consider a response that is not timely filed.

(4) If CMS's preliminary determination that an election is invalid remains unchanged after CMS considers the plan sponsor's timely response (or in the event that the plan sponsor fails to respond timely), CMS provides written notice to the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's

address is known to CMS) of CMS's final determination that the election is invalid. Also, CMS informs the plan sponsor that, within 45 days of the date of the notice of final determination, the plan, subject to paragraph (i)(1)(iii) of this section, must comply with all requirements of this part for the specified period for which CMS has determined the election to be invalid.

(k) *Enforcement.* To the extent that an election under this section has not been filed or a non-Federal governmental plan otherwise is subject to one or more requirements of this part, CMS enforces those requirements under part 150 of this subchapter. This may include imposing a civil money penalty against the plan or the plan sponsor, as determined under §150.305.

(1) *Construction.* Nothing in this section should be construed to prevent a State from taking the following actions:

(1) Establishing, and enforcing compliance with, the requirements of State law (as defined in §146.143(d)(1)), including requirements that parallel provisions of title XXVII of the PHS Act, that apply to non-Federal governmental plans or sponsors.

(2) Prohibiting a sponsor of a non-Federal governmental plan within the State from making an election under this section.

[67 FR 48811, July 26, 2002]

**PART 147 [RESERVED]**

**PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET**

**Subpart A—General Provisions**

- Sec.
- 148.101 Basis and purpose.
- 148.102 Scope, applicability, and effective dates.
- 148.103 Definitions.

**Subpart B—Requirements Relating to Access and Renewability of Coverage**

- 148.120 Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.
- 148.122 Guaranteed renewability of individual health insurance coverage.