

Proposed Rules

Federal Register

Vol. 71, No. 116

Friday, June 16, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AG66

Federal Employees Health Benefits: Payment of Premiums for Periods of Leave Without Pay or Insufficient Pay

AGENCY: Office of Personnel Management

ACTION: Proposed rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to rewrite certain sections of the Federal regulations in plain language. These regulations require Federal agencies to provide employees entering leave without pay (LWOP) status, or whose pay is insufficient to cover their Federal Employees Health Benefits (FEHB) premium payments, written notice of their opportunity to continue their FEHB coverage. Employees who want to continue their enrollment must sign a form agreeing to pay their premiums directly to their agency on a current basis, or to incur a debt to be withheld from their future salary. The purpose of this proposed regulation is to rewrite the existing regulations to ensure that employees who are entering LWOP status, or whose pay is insufficient to pay their FEHB premiums, are fully informed when they decide whether or not to continue their FEHB coverage.

DATES: Comments must be received on or before August 15, 2006.

ADDRESSES: This document is available for viewing at www.regulations.gov and at the U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Send all comments to Anne Easton, Manager, Insurance Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael Kaszynski, Policy Analyst, at 202.606.0004.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to rewrite 5 CFR 890.502 in plain language. OPM issued an interim regulation containing most of these substantive changes on July 22, 1996, at 61 FR 37807. This regulation is an up-dated plain language version of 61 FR 37807. The following is a chronological history for the legislation and regulations that have contributed to the development of this proposed regulation.

On May 10, 1994, OPM issued a proposed regulation in the **Federal Register** (59 FR 24062) that proposed a number of changes to the Federal Employees Health Benefits (FEHB) Program that would result in better service to enrollees. One of the proposed changes established a requirement that agencies inform employees entering leave without pay (LWOP) status (or any other type of nonpay status, except periods of nonpay resulting from a lapse of appropriations), or receiving pay insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. The proposed regulation intended to ensure employees were fully aware of these alternatives. Furthermore, because the proposed regulation established a procedure under which the employee voluntarily arranged to have the debt recovered from salary in a specified amount after returning to duty or after salary increases to cover the amount of the health benefits contributions, the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 did not apply. On November 23, 1994, OPM issued a regulation in the **Federal Register** (59 FR 60294) that put into effect all of the changes proposed in the May 10, 1994, regulation except the requirement that agencies inform employees entering LWOP status, or receiving pay insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage. The interim regulation published on July 22, 1996, at 61 FR 37807 put into effect these

changes. On December 30, 1994, and June 1, 1995, OPM issued interim and final regulations in the **Federal Register** (59 FR 67605 and 60 FR 28511), respectively, that eliminated the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment in the FEHB Program will be terminated due to nonpayment of premiums unless the payment is received within 15 days. On June 17, 1994, and December 27, 1994, OPM issued proposed and final regulations in the **Federal Register** (59 FR 31171 and 59 FR 66434). In those regulations, OPM delegated to Federal agencies the authority to reconsider disputes over coverage and enrollment issues in the Federal Employees' Group Life Insurance and the FEHB Programs and to make retroactive as well as prospective corrections of errors. On October 1, 2003 and September 23, 2004, OPM issued proposed and final regulations in the **Federal Register** (68 FR 56523 and 69 FR 56927 respectively) mandating compliance with court orders requiring Federal employees to provide health benefits for their children as required by the Federal Employees Health Benefits Children's Equity Act of 2000 (Pub. L. 106-394).

Collection of Information Requirement

The proposed rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term "collection of information" which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of \$11.5 million or less in any one year. This rulemaking affects FEHB Program enrollment practices which do not impact the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). This rule is not considered a major rule, as defined in section 804(2) of title 5, United States Code, because we estimate it will only affect Federal Government employment offices. Any resulting economic impact would not be expected to exceed the dollar threshold.

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 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Military Personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Linda M. Springer,
Director.

For the reasons set forth in the preamble, OPM is proposing to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061, unless otherwise noted.

2. In § 890.502 paragraphs (a), (b), (c), (d) and (e) are revised to read as follows:

§ 890.502 Withholdings, Contributions, LWOP, Premiums, and Direct Premium Payment.

(a) *Employee and annuitant withholdings and contributions.* (1) Employees and annuitants are responsible for paying the enrollee share of the cost of enrollment for every pay period during which they are enrolled. An employee or annuitant incurs a debt to the United States in the amount of the proper employee or annuitant withholding required for each pay period during which they are enrolled if the appropriate health benefits withholdings or direct premium payments are not made.

(2) An individual is not required to pay withholdings for the period between the end of the pay period in which he or she separates from service and the commencing date of an immediate annuity, if later.

(3) Temporary employees who are eligible to enroll under 5 U.S.C. 8906a must pay the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 of this chapter are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

(4) The employing office must calculate the withholding for employees whose annual pay is paid during a period shorter than 52 workweeks on an annual basis and prorate the withholding over the number of installments of pay regularly paid during the year.

(5) The employing office must make the withholding required from enrolled survivor annuitants in the following order. First, withhold from the annuity of a surviving spouse, if there is one. If

that annuity is less than the amount required, withhold to the extent necessary from the annuity of the youngest child, and if necessary, from the annuity of the next older child, in succession, until the withholding is met.

(6) Surviving spouses who have a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants whose health benefits premiums are more than the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office, as described in paragraph (d) of this section.

(b) *Procedures when an employee enters a leave without pay (LWOP) status or pay is insufficient to cover premium.* The employing office must tell the employee about available health benefits choices as soon as it becomes aware that an employee's premium payments cannot be made because he or she will be or is already in a leave without pay (LWOP) status or any other type of nonpay status. (This does not apply when nonpay is as a result of a lapse of appropriations.) The employing office must also tell the employee about available choices when an employee's pay is not enough to cover the premiums.

(1) The employing office must give the employee written notice of the choices and consequences as described in paragraphs (b)(2)(i) and (ii) of this section and will send a letter by first-class mail if it cannot give it to the employee directly. If it mails the notice, it is deemed to be received within 5 days.

(2) The employee must elect in writing to either continue health benefits coverage or terminate it. (Exception: An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child(ren).) The employee may continue coverage by choosing one of the following ways to pay and returning the signed form to the employing office within 31 days after he or she receives the notice (45 days for an employee residing overseas). When an employee mails the signed form, its postmark will be used as the date the form is returned to the employing office. If an employee elects to continue coverage, he or she must elect in writing one of the following:

(i) Pay the premium directly to the agency and keep the payments current. The employee must also agree that if he or she does not pay the premiums currently, the employing office will recover the amount of accrued unpaid premiums as a debt under paragraph (b)(2)(ii) of this section.

(ii) If the employee does not wish to pay the premium directly to the agency and keep payments current, he or she may agree that upon returning to employment or upon pay becoming sufficient to cover the premiums, the employing office will deduct, in addition to the current pay period's premiums, an amount equal to the premiums for a pay period during which the employee was in a leave without pay (LWOP) status or pay was not enough to cover premiums. The employing office will continue using this method to deduct the accrued unpaid premiums from salary until the debt is recovered in full. The employee must also agree that if he or she does not return to work or the employing office cannot recover the debt in full from salary, the employing office may recover the debt from whatever other sources it normally has available for recovery of a debt to the Federal Government.

(3) If the employee does not return the signed form within the time period described in paragraph (b)(2) of this section, the employing office will terminate the enrollment and notify the employee in writing of the termination.

(4)(i) If the employee is prevented by circumstances beyond his or her control from returning a signed form to the employing office within the time period described in paragraph (b)(2) of this section, he or she may write to the employing office and request reinstatement of the enrollment. The employee must describe the circumstances that prevented him or her from returning the form. The request for reinstatement must be made within 30 calendar days from the date the employing office gives the employee notice of the termination. The employing office will determine if the employee is eligible for reinstatement of coverage. When the determination is affirmative, the employing office will reinstate the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request a review of the decision from the employing agency (see § 890.104).

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the

employee will incur a debt to the Federal Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(5) Terminations of enrollment under paragraphs (b)(2) and (3) of this section are retroactive to the end of the last pay period in which the premium was withheld from pay. The employee and covered family members, if any, are entitled to the temporary extension of coverage for conversion and may convert to an individual contract for health benefits. An employee whose coverage is terminated may enroll upon his or her return to duty in pay status in a position in which the employee is eligible for coverage under this part.

(c) *Procedures when agency under-withholds premiums.* (1) An agency that withholds less than the amount due for health benefits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the uncollected employee contributions and any applicable agency contributions to OPM for deposit in the Employees Health Benefits Fund.

(2) The agency must make the deposit to OPM as soon as possible, but no later than 60 calendar days after it determines the amount of an under-deduction that has occurred, regardless of whether or when the agency recovers the under-deduction. A subsequent agency decision on whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions will be made under 5 U.S.C. 5584 as implemented by 4 CFR chapter I, subchapter G, unless the agency involved is excluded from 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

(d) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under subchapter III of chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium, or if a surviving spouse receives a basic employee death benefit, the retirement system must provide written information to the annuitant or surviving spouse. The information must describe the health benefits plans available, and include the opportunity to either (i) enroll in a health benefits plan in which the enrollee's share of the premium is less than the annuity amount or (ii) pay the premium directly to the retirement system.

(2) The retirement system must accept direct payment for health benefits premiums in these circumstances. The annuitant or surviving spouse must continue direct payment of the premium

even if the annuity increases to the extent that it covers the premium.

(3) The annuitant or surviving spouse must pay the retirement system his or her share of the premium for the enrollment for every pay period during which the enrollment continues, except for the 31-day temporary extension of coverage. The individual must make the payment after each pay period in which he or she is covered using a schedule set up by the retirement system. If the retirement system does not receive payment by the due date, it must notify the individual in writing that continued coverage depends upon payment being made within 15 days (45 days for annuitants or surviving spouses residing overseas) after the notice is received. If no subsequent payments are made, the retirement system terminates the enrollment 60 days after the date of the notice (90 days for annuitants or surviving spouses residing overseas). An annuitant or surviving spouse whose enrollment terminated due to nonpayment of premium may not reenroll or reinstate coverage unless there are circumstances beyond his or her control as provided in paragraph (d)(4) of this section.

(4) If the annuitant or surviving spouse is prevented by circumstances beyond his or her control from paying the premium within 15 days after receiving the notice, he or she may ask the retirement system to reinstate the enrollment by writing the retirement system. The individual must describe the circumstances and send the request within 30 calendar days from the termination date. The retirement system will determine if the annuitant or surviving spouse is eligible for reinstatement of coverage. When the determination is affirmative, the retirement system will reinstate the coverage retroactive to the date of termination. If the determination is negative, then the individual may request a review of the decision from the retirement system, as described in § 890.104.

(5) Termination of enrollment for failure to pay premiums within the time frame described in paragraph (d)(3) of this section is retroactive to the end of the last pay period for which payment was timely received.

(6) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM according to procedures established by OPM.

(e) *Procedures for direct payment of premiums during LWOP after 365 days.* (1) An employee who is granted leave without pay (LWOP) under subpart L of part 630 of this chapter (Family and

Medical Leave) after 365 days of continued coverage under § 890.303(e) must pay the employee contributions directly to the employing office and keep payments current.

(2) The employee must make payments after the pay period in which the employee is covered according to a schedule set up by the employing office. If the employing office does not receive the payment by the date due, it must notify the employee in writing that continued coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after the notice is received. If no subsequent payments are made, the employing office terminates the enrollment 60 days after the date of the notice (90 days for enrollees residing overseas).

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe in paragraph (e)(2) of this section, he or she may ask the employing office to reinstate the enrollment by writing to the employing office. The employee must file the request within 30 calendar days from the date of termination and must include supporting documentation.

(4) The employing office determines whether the employee is eligible for reinstatement of coverage. When the determination is affirmative, the employing office will reinstate the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request the employing agency to review the decision as provided under § 890.104.

(5) An employee whose coverage is terminated under paragraph (e)(2) of this section may enroll if he or she returns to duty in a pay status in a position in which the employee is eligible for coverage under this part.

* * * * *

[FR Doc. E6-9418 Filed 6-15-06; 8:45 am]

BILLING CODE 6329-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NE-49-AD]

RIN 2120-AA64

Airworthiness Directives; CFM International CFM56-5 and -5B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for CFM International CFM56-5 and -5B series turbofan engines. That AD currently requires exhaust gas temperature (EGT) harness replacement or the establishment of an EGT baseline and trend monitoring. That AD also requires replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD. This proposed AD would require the same actions but for an increased population of affected EGT harnesses. This proposed AD results from CFM International adding subsequently certified engine models to the list of engines that could have affected harnesses installed. We are proposing this AD to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.

DATES: We must receive any comments on this proposed AD by August 15, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-49-AD, 12 New England Executive Park, Burlington, MA 01803.

- *By fax:* (781) 238-7055.

- *By e-mail:* 9-ane-adcomment@faa.gov.

Contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2800; fax (513) 552-2816 for the service information identified in this proposed AD.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7152; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2001-NE-49-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On January 13, 2003, we issued AD 2003-02-04, Amendment 39-13020 (68 FR 3171, January 23, 2003). That AD requires the establishment of an EGT baseline and trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent. The baseline and trend monitoring is used as an option to EGT harness replacement. That AD also requires replacement, if necessary, of certain EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of that AD. That condition, if not corrected, could result in unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGTs.