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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AG66

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

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim regulation to require Federal agencies to provide employees entering leave without pay (LWOP) status, or whose pay is insufficient to cover their 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 interim regulation is 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: This interim regulation is effective August 21, 1996. We must receive comments on or before September 20, 1996.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco, (202) 606-0004.

SUPPLEMENTARY INFORMATION: On May 10, 1994, OPM issued a 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 changes proposed establishing a requirement that agencies inform employees entering leave without pay status (LWOP), (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 proposal intended to ensure employees are fully aware of these alternatives. Furthermore, because the proposal would establish a procedure under which the employee voluntarily arranges 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 would 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. This interim regulation covers the requirement.

We received comments from two Federal agencies and one retiree organization. One commenter agreed that employees need to be advised of the options they have to continue FEHB coverage while they are in LWOP status or when their pay is insufficient, but had a concern. Their concern was that the proposal did not clearly state what would happen to the FEHB enrollment of employees who go on LWOP status or whose pay is insufficient if they did not elect in writing to continue or terminate their FEHB enrollment.

We have addressed this concern by amending the proposal to require employing offices to provide employees

with a written notice of the options of continuing or terminating their FEHB coverage. The enrollments of employees who do not return a signed form to their employing office within 31 days after the day they receive the notice are terminated. The termination is retroactive to the end of the last pay period in which the premium was withheld from pay.

The employees and covered family members, if any, are entitled to the 31-day temporary extension of coverage and may convert to an individual contract for health benefits. In addition, employees who are prevented by circumstances beyond their control from timely returning a signed form to the employing office may request the employing office to reinstate their coverage. Therefore, employees who through no fault of their own are not able to return a signed form to the employing office within 31 days are protected by the temporary extension of coverage and their right to request reinstatement of their coverage. Employees who terminate their enrollment may enroll upon their return to pay status.

One commenter agreed that the change should resolve some of the past problems and clarify agency and employee responsibilities, but that continued monitoring by OPM and agency staff of operating personnel offices' administration of the FEHB enrollment procedures for employees in LWOP status will be required. We agree continued monitoring is still required, and note that it is the responsibility of agencies' staff to monitor their employing offices' procedures for employees who enter LWOP status to ensure employees receive the information required by this regulation.

One commenter disagreed with OPM's statement that the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 would not apply under this regulation. The involuntary offset provisions require agencies to follow due process procedures such as giving employees written notice and an opportunity for a hearing before collecting debts from their pay. Section 550.1102(b) of subpart K of 5 CFR part 550 states, "This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, *except where the employee consents to the recovery*, from

the current pay account of an employee." (emphasis added). Because this regulation requires employees entering LWOP status or receiving pay insufficient to cover their FEHB premiums to consent in writing to the recovery of the debt they are incurring by continuing their FEHB coverage, the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 do not apply.

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. This interim regulation further amends 5 CFR 890.502 to eliminate the requirement for the use of certified mail, return receipt requested, for the following circumstances: (1) Annuitants whose FEHB premiums exceed the amount of their annuities; (2) surviving spouses in receipt of a lump-sum basic employee death benefit under the Federal Employees Retirement System; and (3) employees in LWOP status in excess of 365 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) that delegated from OPM 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. This interim regulation amends 5 CFR 890.502, 890.808, and 890.1109 to conform with the delegation of authority to Federal agencies.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 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.

§ 890.301 [Amended]

2. In § 890.301, paragraph (c) is amended by removing "§ 890.304(a)(5)" and adding in its place "§ 890.304(a)(1)(v)".

3. In § 890.502, paragraphs (a), (b), (c), (d), and (e) are revised; paragraphs (f) and (h) are removed, and paragraph (g) is redesignated as paragraph (f), to read as follows:

§ 890.502 Employee and annuitant withholdings and contributions and direct payment of premiums.

(a) *Employee and annuitant withholdings and contributions.* (1) Except as provided in paragraphs (a)(2) and (g) of this section, an employee or annuitant is responsible for payment of the employee or annuitant share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee or annuitant withholding required for each pay period that health benefits withholdings or direct premium payments are not made but during which the enrollment continues.

(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 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph (a)(3).

(4) The employing office must determine 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 any. If that annuity is less than the withholding required, the employing office must make the withholding to the extent necessary from the annuity of the children, if any, in the following order. First, withhold from the annuity of the youngest child, and if necessary, then from the annuity of the next older child, in succession, until the withholding is satisfied.

(6) Surviving spouses in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants whose health benefits premiums exceed the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office in accordance with procedures set out in paragraph (d) of this section.

(b) *Procedures when employee enters LWOP status or pay is insufficient to cover premium.* As soon as the employing office is aware of an employee whose premium payments cannot be made because the employee will be entering or has entered leave without pay status, (or any other type of nonpay status, except periods of nonpay resulting from a lapse of appropriations), or the employee's pay is insufficient to cover the premiums, the employing office must inform the employee of the available health benefits options.

(1) The employing office must provide the employee written notice of the options and consequences as described in paragraphs (b)(2) (i) and (ii) of this section. If the employing office cannot give the notice required by this paragraph (b)(1) to the employee directly, it must send the notice by first class mail. A notice that is mailed is deemed to be received 5 days after the date of the notice.

(2) The employee must elect in writing either to continue health benefits coverage or terminate it. The employee may continue his or her health benefits coverage by choosing one of the options listed in this paragraph (b)(2) and returning the signed form to the employing office within 31 days from the day he or she receives the notice (45 days for an employee residing overseas). When an employee mails the signed form, the date of the postmark is deemed to be the date the notice is returned to the employing office. If an employee elects

to continue coverage, he or she must elect in writing either to—

(i) Agree to pay the premium directly to the agency on a current basis. The employee must agree that if he or she does not pay the premiums, 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 LWOP status. 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 United States, or

(ii) Agree 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 LWOP status. 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 United States.

(3) Except as provided under paragraph (b)(4) of this section, if the employee does not return the signed form within 31 days after the day he or she receives the notice (45 days for employees residing overseas) the employing office terminates the enrollment according to paragraph (b)(5) of this section. The employing office must give the employee written notification of the termination.

(4) If the employee is prevented by circumstances beyond his or her control from returning a signed form to the employing office within the time frame under paragraph (b)(2) of this section, he or she may request reinstatement of coverage by writing to the employing office. The employee must describe the circumstances that prevented timely notice and file the request within 30 calendar days from the date the employing office gives the employee notification of the termination. The

employing office determines if the employee is eligible for reinstatement of coverage. If the determination is affirmative, the employing office reinstates 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 as provided under § 890.104.

(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 a pay status in a position in which the employee is eligible for coverage under this part.

(c) *Procedures when an agency underwithholds.* (1) An agency that withholds less than the proper health benefits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the sum of the uncollected contributions and any applicable agency contributions required under section 8906 of title 5, United States Code, to OPM for deposit in the Employees Health Benefits Fund.

(2) The agency must make the deposit to OPM described in paragraph (c)(1) of this section as soon as possible, but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the agency recovers the underdeduction. A subsequent agency determination whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR chapter I, subchapter G, unless the agency involved is excluded from application of 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 due or if a surviving spouse receives a basic employee death benefit, the retirement system must provide information to the annuitant or surviving spouse regarding the available plans and notify him or her in writing of the opportunity to either: enroll in any plan in which the enrollee's share

of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system.

(2) The retirement system must establish a method for accepting direct payment for health benefits premiums from surviving spouses who have received or are currently receiving basic employee death benefits as well as from annuitants whose annuities are too low to cover their health premiums. The annuitant or surviving spouse must continue to make direct payment of the health benefits premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant or surviving spouse must pay to the retirement system his or her share of the premium for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The annuitant or surviving spouse must pay after each pay period in which he or she is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system must notify the annuitant or surviving spouse in writing that continuation of coverage depends upon payment being made within 15 days (45 days for annuitants or surviving spouses residing overseas) after receipt of the notice. If no subsequent payments are made, the retirement system terminates the enrollment 60 days (90 days for annuitants or surviving spouses residing overseas) after the date of the notice. An annuitant or surviving spouse whose enrollment terminates because of nonpayment of premium may not reenroll or reinstate coverage, except 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 within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. The annuitant or surviving spouse must describe the circumstances that prevented timely notice and file the request within 30 calendar days from the date of termination. The retirement system determines whether the surviving spouse or annuitant is eligible for reinstatement of coverage. If the determination is affirmative, the retirement system reinstates the coverage of the surviving spouse or annuitant retroactive to the date of termination. If the determination is negative, the surviving spouse or

annuitant may request a review of the decision from the retirement system as provided under § 890.104.

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

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

(e) *Direct payment of premiums during periods of LWOP status in excess of 365 days.* (1) An employee who is granted leave without pay under subpart L of part 630 of this chapter which exceeds the 365 days of continued coverage under § 890.303(e) must pay the employee contributions directly to the employing office on a current basis.

(2) Payment must be made after the pay period in which the employee is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, the employing office must notify the employee in writing that continuation of coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after receipt of the notice. If no subsequent payments are made, the employing office terminates the enrollment 60 days (90 days for enrollees residing overseas) after the date of the notice.

(3) If the employee was prevented by circumstances beyond his or her control from making payment within the time frame specified in paragraph (e)(2) of this section, he or she may request reinstatement of the coverage by writing to the employing office. The employee must describe the circumstances that prevented timely notice and file the request within 30 calendar days from the date of termination.

(4) The employing office determines whether the employee is eligible for reinstatement of coverage. If the determination is affirmative, the employing office reinstates 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 as provided under § 890.104.

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

* * * * *

4. In § 890.808, the last sentence of paragraph (d)(2) is revised to read as follows:

§ 890.808 Employing office responsibilities.

* * * * *

(d) * * *

(2) * * * If the determination is negative, the individual may request a review of the decision from the employing agency as provided under § 890.104.

* * * * *

5. In § 890.1109, the last sentence of paragraph (d)(2) is revised to read as follows:

§ 890.1109 Premium payments

* * * * *

(d) * * *

(2) * * * If the determination is negative, the individual may request a review of the decision from the employing agency as provided under § 890.104.

[FR Doc. 96-18515 Filed 7-19-96; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96-906-1 IFR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1996-97 and subsequent fiscal period. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by August 21, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be

sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501, telephone (210) 682-2833, FAX (210) 682-5942, or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 690-3670, FAX (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax# (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file