

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

RIN 3206-AK48

#### Federal Employees Health Benefits Program: Modification of Two-Option Limitation for Health Benefits Plans and Continuation of Coverage for Annuitants Whose Plan Terminates an Option

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is modifying the prohibition against Federal Employees Health Benefits (FEHB) plans offering more than 2 options, to allow FEHB plans to offer 2 options plus a high deductible plan. OPM is also modifying what happens when an annuitant's health plan terminates an option, and the annuitant doesn't make a health benefits change.

**DATES:** Effective June 7, 2004. OPM must receive comments by August 6, 2004.

**ADDRESSES:** Send written comments to Abby L. Block, Deputy Associate Director for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

**FOR FURTHER INFORMATION CONTACT:** Karen Leibach, (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** Pub. L. 108-173, Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act, 117 Stat. 2006), enacted December 8, 2003, contains a provision (section

1201) authorizing health savings accounts (HSAs) for individuals who are not eligible for Medicare and who are in a high deductible health benefits plan. A high deductible plan, as defined in U.S. Code 223(c)(2)(A) of the title 26, is a plan with a deductible of at least \$1,000 for individual coverage or \$2,000 for family coverage. Some FEHB plans may be interested in offering eligible enrollees such a high deductible plan product with an HSA or a health reimbursement account (HRA) if the enrollee is not eligible for an HSA. An HRA is an employer-provided accident or health plan, which reimburses employees for certain medical care expenses incurred by the employee, the employee's spouse, and dependents. However, many plans participating in the FEHB Program already offer 2 options, and current regulations do not permit FEHB plans to offer more than 2 options. Therefore, OPM is revising its regulations to allow plans participating in the FEHB Program to offer 2 options plus a high deductible plan.

OPM is also changing slightly what happens when an annuitant's plan terminates an option, and the annuitant does not make a health benefits change. Currently, our regulations state that if a plan has 2 options, and one of the options is discontinued, an annuitant who does not change health plans is considered to be enrolled in the plan's remaining option. However, with the introduction of new products, such as consumer-driven plans and plans with high deductibles, it may not be in an annuitant's best interests to be "deemed" into a plan's remaining option. We are revising our regulation to state that an annuitant who doesn't make a health benefits change when his/her plan terminates an option will be moved into the plan's remaining option if that option reasonably approximates the terminating option. If the remaining option does not reasonably approximate the terminating option, such as the remaining option is a high deductible health plan or a consumer driven plan, and the annuitant doesn't make a health benefits change, he/she will be moved into the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

## Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness for this rule. The HSA provision of Pub. L. 108-173 became effective January 1, 2004.

## Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health benefits plans and annuitants participating in the Federal Employees Health Benefits Program.

## 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, Reporting and record keeping requirements, Retirement.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*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. 403(p), 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), and 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. Revise paragraph (b)(3) of § 890.201 to read as follows:

### § 890.201 Minimum standards for health benefits plans.

\* \* \* \* \*

(b) \* \* \*

(3) Have more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A)).

■ 3. Revise paragraph (1)(4)(iii) of § 890.306 to read as follows:

**§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?**

\* \* \* \* \*

(1) \* \* \*

(4) \* \* \*

(iii) If a plan has more than one option, and one or more options of the plan is discontinued, an annuitant who does not change the enrollment is considered to be enrolled in a remaining option of the plan. However, if OPM determines that there is no remaining option that reasonably approximates the terminating option, the annuitant will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

\* \* \* \* \*

[FR Doc. 04-12799 Filed 6-2-04; 3:28 pm]

BILLING CODE 6325-39-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-025-1]

#### Gypsy Moth Generally Infested Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the gypsy moth regulations by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

**DATES:** This interim rule is effective June 7, 2004. We will consider all comments that we receive on or before August 6, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04-025-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-025-1.

- *E-mail:* Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04-025-1" on the subject line.

- *Agency Web Site:* Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5705.

#### SUPPLEMENTARY INFORMATION:

##### Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested

area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

#### Designation of Areas as Generally Infested Areas

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding one county in Ohio and seven counties in Wisconsin to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the State of Ohio and the State of Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Hocking County, OH, and in Adams, Dane, Lincoln, Marathon, Marquette, Oneida, and Vilas Counties, WI. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

#### Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.