

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

RIN 3206-AK04

### Changes in Health Benefits Enrollment

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on changes in health benefits enrollment for annuitants or survivor annuitants when a carrier terminates participation in the Federal Employees Health Benefits (FEHB) Program. We are amending the regulations to give OPM the authority to enroll annuitants in whichever option of the Blue Cross Blue Shield (BC/BS) Service Benefit Plan it determines will most closely approximate the terminated plan.

**EFFECTIVE DATE:** July 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nataya Battle, (202) 606-1874, or e-mail to [nataya.battle@opm.gov](mailto:nataya.battle@opm.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 9, 2004, OPM published proposed regulations in the **Federal Register** (69 FR 5935-5936) on changes in health benefits enrollment for annuitants or survivor annuitants when a carrier terminates participation in the FEHB Program. Effective August 18, 1997, OPM amended 5 CFR 890.306(l)(4) to authorize OPM to enroll an annuitant in the standard option of the Service Benefit Plan when the annuitants' health plan terminates participation in whole or in part in the FEHB Program and the annuitant fails to elect to change to another participating health plan. At that time, the BC/BS Service Benefit Plan offered the high

option and the standard option. The standard option was the lower level of benefits with a lower premium cost. Beginning with the January 1, 2002, contract year, the BC/BS Service Benefit Plan merged the high option coverage into the standard option coverage and added a basic option. The standard option is now the highest level of coverage offered with the more costly premium rate.

In the existing regulation, an annuitant who does not elect to change health plans is deemed to have enrolled in the standard option, or if the plan he or she was enrolled in had two options, he or she is deemed to have enrolled in the same option previously enrolled in (either high or low), if the annuity is sufficient to pay the high option premium. The annuitant may not change to another health plan until the next open season.

The more costly premium rate may not be affordable for many annuitants. Amending this regulation will allow OPM the flexibility to consider the premium rate and the benefits that the annuitant was receiving under his or her terminated health plan, and enroll the annuitant in the option of the BC/BS Service Benefit Plan that most closely approximates the terminated plan. In addition, this amendment will give the annuitant the opportunity to change the option or to change to another health plan of his or her choice retroactively within 90 days of the date OPM sent notification that he or she has been deemed enrolled in a particular option of the BC/BS Service Benefit Plan.

On February 9, 2004, OPM issued proposed regulations at 69 FR 5935-5936 and requested comments by April 9, 2004. OPM received comments from NARFE. NARFE contends that the benefit structure of the BC/BS Service Benefit Plan basic option is not suitable for annuitants who have Medicare because the basic option does not have a mail service prescription drug benefit and co-payments are based on a supply of up to 34-days as opposed to a 90-day supply under the standard option. In addition, NARFE contends that the basic option does not have a skilled nursing facility benefit in conjunction with Medicare, as does the standard option. OPM's response to these contentions is that annuitants who are deemed enrolled in the BC/BS Service Benefit Plan basic option will have been

previously enrolled in a health plan that is similar to the basic option. NARFE also requests that annuitants be allowed up to 90-days to elect to enroll in a new health plan. OPM has agreed to amend the regulation to allow all annuitants up to 90-days to elect to enroll in a new plan to accommodate the annuitants who do not realize that there has been a change in the amount of their health insurance premiums until they receive their February annuity check.

#### Regulatory Flexibility Act

OPM has determined that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health benefits of certain Federal retirees.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

#### List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.

**Dan G. Blair,**

*Acting 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 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; 890.303 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 § 890.306 revise paragraphs (l)(4)(ii), (iii), and (iv) and (q)(1)(ii) to read as follows:

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

\* \* \* \* \*

(l) \* \* \*

(4) \* \* \*

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan, except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iii) If a plan has two options, and one option of the plan is discontinued, an annuitant who does not change the enrollment is considered to be enrolled in the remaining option of the plan, except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to the other option of the Blue Cross and Blue Shield Service Benefit Plan or to another health plan of his or her choice retroactively within 90-days after OPM advises the annuitant of the new enrollment;

\* \* \* \* \*

(q) \* \* \*

(1) \* \* \*

(ii) Enroll in any plan in which the annuitant's share of the premium is less than the amount of annuity. If the annuitant elects to change to a lower cost enrollment, the change takes effect immediately upon loss of coverage under the prior enrollment. The exemptions from debt collection procedures that are provided under § 831.1305(d)(2) and § 845.205(d)(2) of this chapter apply to elections under this paragraph (q)(1)(ii).

\* \* \* \* \*

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560-AH20

Designated Marketing Associations for Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets out regulations governing the use of designated marketing associations in connection with the making of marketing assistance loans for peanuts and the making of loan deficiency payments in lieu of such loans. These regulations reflect current procedures under broader regulations that precede this rule and specify when storage credit begins for loans handled by designated marketing associations.

DATES: Effective June 10, 2005.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, Program Manager, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC 20250-0512; telephone (202) 720-7935; facsimile (202) 690-3307; e-mail: chris.kyer@wdc.usda.gov. Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule sets out regulations governing the use of "designated marketing associations" (DMA's) by peanut producers in connection with the Farm Security and Rural Investment Act of 2002, Public Law 107-171, ("2002 Act"), in the making of marketing assistance loans (MAL's) and loan deficiency payments (LDP's) in lieu of MAL's. Section 1307(a)(4) of the 2002 Act provided for peanuts that such loans and LDP's could be obtained through a DMA or a marketing cooperative of producers approved by the Secretary, or the Farm Service Agency of the Department. Regulations governing such loans and LDP's are codified in 7 CFR Part 1421 and include DMA provisions. Rules relating to the use of cooperative marketing associations (CMA's) are found at 7 CFR Part 1425. This rule adds greater specificity to part 1421's DMA provisions consistent with current procedures and reorganizes part 1421 by designating a separate subpart for the DMA provisions. Also, the rule specifies

when storage credit may begin for DMA-handled loans. Also, § 1421.115 is renumbered as 1421.114 to reflect that the latter number was not being used. Further, the authority citation for Part 1421 is updated.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the administration of Title I of the 2002 Act shall be made without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Likewise, Section 1601 of the 2002 Act provides that in carrying out the provisions exempting the administration of the program from notice and comment, the Secretary shall use the authority provided under 5 U.S.C. section 808 of Title 5, United States Code. Under the latter provisions, certain rules are exempted from possible Congressional review before implementation where it is determined that going without notice and public procedures are in the public interest. Such is the case here, in light of the explicit provisions of Section 1601. In addition, this rule simply sets out procedures for voluntary participation by non-producers related to an ongoing program and the new regulations reflect current policy. For those reasons as well, delay in implementation would be contrary to the public interest. Accordingly, this rule is made effective on publication.

Executive Order 12866

This rule has been designated as "Not Significant" under Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent