

# Proposed Rules

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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 894

RIN 3206-AL78

### Changes in the Federal Employees Dental and Vision Insurance Program

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U. S. Office of Personnel Management (OPM) is issuing proposed regulations on changes in the Federal Employees Dental and Vision Insurance Program (FEDVIP). We are amending the regulations to authorize retroactive enrollment changes when an enrollee has lost his or her spouse through death or divorce or the enrollee's last eligible child dies, marries, or reaches age 22. We are also amending the regulations to add that an individual may enroll 31 days before the enrollee or an eligible family member loses other dental and/or vision coverage. We are also amending the regulations to clarify the reference to excluded positions in 5 U.S.C. 8901(1). We are also including in the regulations certain Senate restaurant employees who are employees of the Architect of the Capitol as individuals who are eligible to elect to continue enrollment in FEDVIP if they are eligible and elect to continue their retirement coverage.

**DATES:** OPM must receive comments on or before August 3, 2009.

**ADDRESSES:** Send written comments to Nataya I. Battle, Senior Policy Analyst, Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415-3666; or deliver to OPM, Room 3415, 1900 E Street, NW., Washington, DC or FAX to (202) 606-0036.

Comments may also be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal

must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

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

#### SUPPLEMENTARY INFORMATION:

#### Background

On December 23, 2004, Public Law 108-496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and their eligible family members. The first effective date of coverage was December 31, 2006. The existing regulations allow an enrollment change based on a Qualifying Life Event (QLE) only when the enrollee requests it during the period beginning 31 days before the QLE and ending 60 days after the QLE. The change in enrollment is effective the first day of the first pay period following the date of the request. If the enrollee has no more eligible family members and he or she misses the 60-day time limit, there is no provision that will allow for the change in enrollment to be made retroactive to the first day of the first pay period following the date the family member lost eligibility. Enrollees are being forced to pay for a family enrollment or a self plus one enrollment even though their family members are deceased or no longer eligible for coverage, until the next Open Season opportunity to change enrollment. This amendment will lift the deadline by which such an enrollee must change his or her enrollment and will allow the enrollment change to take effect retroactively when the enrollee has a self plus one enrollment and his or her family member dies or loses eligibility, through divorce or when the dependent child marries or reaches age 22. This amendment will also allow retroactive enrollment changes from a family enrollment that includes two family members to a self plus one enrollment if one of the family members loses eligibility (*i.e.*, when there is a death or divorce, or when a dependent child marries or reaches age 22).

When an eligible family member loses dental or vision coverage, the existing regulations allow the enrollee to increase his or her type of enrollment during the period beginning 31 days before the event and ending 60 days after the event. However, the regulations

allow an employee who is not enrolled, and who loses his or her other dental or vision coverage, to enroll within 60 days after the event. This amendment will correct this inconsistency and allow an employee who loses other dental or vision coverage to enroll from 31 days before until 60 days after the event.

The existing regulations (5 CFR 894.302) state that excluded positions are described in 5 U.S.C. 8901(1)(I). This amendment will clarify that excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv).

Public Law 110-279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who is an employee of the Architect of the Capitol on the date of enactment and who accepts employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are revising the FEDVIP regulations to address continuation of coverage for these individuals.

#### 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 dental and vision benefits of Federal employees and annuitants.

#### 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 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and

recordkeeping requirements, Retirement.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

Accordingly, OPM is amending 5 CFR part 894 as follows:

**PART 894—FEDERAL EMPLOYEES DENTAL AND VISION PROGRAM**

1. The authority citation for part 894 is revised to read as follows:

**Authority:** 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Public Law 110–279, 122 Stat. 2604.

**Subpart C—Eligibility**

2. Revise § 894.301 to read as follows

**§ 894.301 Am I eligible to enroll in the FEDVIP?**

You are eligible if—

- (a) You meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position;
- (b) You are an employee of the United States Postal Service or the District of Columbia courts;
- (c)(1) You were employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern; and
- (2) You accepted employment by the business concern and elected to continue your Federal retirement benefits and your FEDVIP coverage. You continue to be eligible for FEDVIP coverage as long as you remain employed by the business concern or its successor.

3. Revise § 894.302 introductory text to read as follows:

**§ 894.302 What is an excluded position?**

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

\* \* \* \* \*

**Subpart E—Enrollment and Changing Enrollment**

4. Revise § 894.501(d) to read as follows:

**§ 894.501 When may I enroll?**

\* \* \* \* \*

(d) From 31 days before you or an eligible family member loses other dental/vision coverage to 60 days after a QLE that allows you to enroll.

5. Revise § 894.510(c) and (d) to read as follows:

**§ 894.510 When may I decrease my type of enrollment?**

\* \* \* \* \*

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

- (i) A decrease in your self plus one enrollment;
- (ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible family member; or
- (iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible family members.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

(2) If you are making an enrollment change described in paragraph (c)(2) of this section, your change in enrollment is effective on the first day of the first pay period following the QLE on which the enrollment change is based.

\* \* \* \* \*

[FR Doc. E9–12617 Filed 6–1–09; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**RIN 3150–AI37**

**[NRC 2009–0014]**

**Incorporation by Reference of Regulatory Guide 1.84, Revision 35, and Regulatory Guide 1.147, Revision 16, Into 10 CFR 50.55a**

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Proposed rule.

**SUMMARY:** The NRC is proposing to amend its regulations to incorporate by reference the latest revisions of two regulatory guides (RG) that would approve new and revised code cases published by the American Society of Mechanical Engineers (ASME). These are RG 1.84, “Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,” Revision 35, and RG 1.147, “Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,” Revision 16. This action

would allow the use of the code cases listed in these RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and inservice inspection (ISI) of nuclear power plant components. Concurrent with this action, the NRC is publishing a notice of the issuance and availability of the RGs in the **Federal Register**.

**DATES:** Submit comments by August 17, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the number RN 3150–AI37 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC–2009–0014. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

*E-mail comments to:* *Rulemaking.Comments@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC’s Public Document Room (PDR), O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents