

**List of Subjects in 5 CFR Part 550**

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending 5 CFR part 550 as follows:

**PART 550—PAY ADMINISTRATION (GENERAL)**

**Subpart C—Allotments and Assignments From Federal Employees**

1. The authority citation for subpart C of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

**§ 550.301 [Amended]**

2. Section 550.301 is amended by removing the definition of *pay*.

3. In § 550.311:

A. Paragraph (a) is amended by removing the period at the end of paragraph (a)(7) and adding a semicolon in its place;

B. A new paragraph (a)(8) is added; and

C. Paragraph (b) is revised.

The addition and revision read as follows:

**§ 550.311 Authority of agency.**

(a) \* \* \*

(8) An allotment to the employing Federal agency to pay an employee's share of Federal Employees Health Benefits premiums, consistent with part 892 of this chapter.

(b) In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. This authority does not extend to allotments to the paying agency for the purpose of reducing taxable income, except where there is an authority specific to Federal employees (statute, Executive order, Presidential directive, or OPM regulations) permitting agencies to provide the pretax benefit in question.

\* \* \* \* \*

4. In § 550.312, paragraph (f) is added to read as follows:

**§ 550.312 General limitations.**

\* \* \* \* \*

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) without specific authorization from the

employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

5. Section 550.313 is added to read as follows:

**§ 550.313 Order of precedence when there is insufficient pay to cover all deductions.**

(a) Except as provided in paragraph (b) of this section, an agency must deduct allotments from any net pay remaining after applying all deductions authorized by law, including any deductions for retirement and other benefits, Social Security and income tax withholdings, collection of a debt to the Government via levy or salary offset, and garnishment. If there is insufficient net pay to cover all of the employee's allotments, the agency must deduct allotments in the order specified under its established rules of precedence.

(b) An agency must deduct an allotment for an employee's share of health benefits premiums under § 550.311(a)(8) before deducting any type of tax withholding.

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**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 890 and 892**

**RIN 3206–AJ17**

**Health Insurance Premium Conversion**

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to enable employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided under section 125 of the Internal Revenue Code. These regulations establish the basic rules under which this premium conversion plan will operate, beginning October 2000.

**DATES:** This interim rule is effective September 18, 2000. Comments must be received on or before September 18, 2000.

**ADDRESSES:** Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel

Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

**FOR FURTHER INFORMATION CONTACT:** Laurie Bodenheimer, (202) 606–0004, or email to [lrbodenh@opm.gov](mailto:lrbodenh@opm.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

At the President's direction, OPM will implement a health insurance premium conversion plan for employees participating in the FEHB Program. The premium conversion plan is part of a "cafeteria plan" under Section 125 of the Internal Revenue Code. OPM will execute a separate plan document to comply with Section 125 requirements and will make that document available on OPM's website: [www.opm.gov](http://www.opm.gov). OPM is also issuing separate instructions to personnel and payroll offices.

The premium conversion plan will take effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are currently not covered by a premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority have already implemented their own premium conversion plans. Employees of those entities will not be covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, will automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an agency of the Executive Branch, will have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agrees to offer participation in the plan. However, any individual enrolled in the FEHB

Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

Premium conversion has no effect on: statutory pay provisions or the General Schedule; the amount of any employee's health insurance premium; or the amount of the Government share towards the FEHB premium on behalf of any employee. Base pay for retirement, life insurance and Thrift Savings Plan purposes is unaffected.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM is also amending its allotment regulations at 5 CFR part 550, subpart C in a separate interim rule issued simultaneously with this rule. Each employee participating in premium conversion will make an allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency will then use that amount to pay the employee's premium. The allotment will be automatic unless the employee elects to waive premium conversion.

#### **Waiver of Notice of Proposed Rulemaking**

In accordance with section 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. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders. OPM followed the Internal Revenue Code to develop a plan document and regulations that comply with tax law and parallel the practices of private sector employers. It is necessary that payroll offices begin work on systems changes so that this benefit will be available at the start of Fiscal Year 2001—a logical time in terms of Federal agency budget and payroll administration.

#### **Regulatory Planning and Review**

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, "Regulatory Planning and Review." Because this regulation has an economic impact exceeding \$100 million annually it is defined by that Executive Order as being "economically significant." It is classified as a major regulation in accordance with the Congressional Review Act because of its economic impact.

#### **Analysis of Costs and Benefits**

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program will begin paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government will become a more competitive employer and the tax liability of Federal employees will decrease.

Costs of this regulation include a start-up cost in the first year to implement the program; a decrease in Medicare, Social Security and income taxes paid by Federal employees; and a decrease in Federal employer payments to the Medicare and Social Security Trust Funds. The benefits and costs of this regulation are described in more detail in the following sections.

#### **Statement of Need for Proposed Action**

In his 2001 Budget, the President directed OPM to implement health insurance premium conversion. Premium conversion will bring the Federal Government in line with private sector practices regarding employee payments of health insurance premiums. Over 60 million private sector employees with employment based health insurance pay their premiums with pre-tax dollars. This regulation will take advantage of current law to allow over 1.5 million Federal employees, representing more than 3 million lives including dependents, to have the same benefit as private sector workers. As a result, the Federal Government will become a more competitive employer and health insurance will become more affordable for Federal employees.

#### **Examination of Alternative Approaches**

In order to implement the President's premium conversion directive, regulatory action is necessary. In developing this regulation, OPM considered various ways to put premium conversion into operation. OPM also hired a contractor with substantial experience in employee benefits tax compliance to write a plan document that conforms to IRS Section 125 rules.

OPM met with those Federal agencies that have already implemented a premium conversion plan: the U.S. Postal Service, the Federal Judiciary, and some small Executive Branch agencies with independent compensation-setting authority. It

studied the range of implementation issues that these organizations encountered, from payroll system changes and educational outreach to complying with the tax code, and identified the key issues that OPM would need to address. OPM has developed these regulations by using the "best practices" of other employers in terms of premium conversion program development and implementation.

#### **Benefits Analysis**

Over the last few decades, the U.S. labor market has become increasingly competitive. Unemployment rates have hovered at about 4 percent, the lowest rates since 1970. Labor force participation rates are at all time highs—67 percent in recent months, up from around 60 percent in 1970. Given these tight labor market conditions, the Federal Government, like all employers, must use every means possible to attract and retain high quality employees. Currently, the Federal Government is at a competitive disadvantage in the labor market because its employees pay their health insurance premiums with after-tax dollars. In the private sector, many employees pay their health insurance premiums with pre-tax dollars, resulting in reduced tax liabilities and greater take-home pay. This regulation will eliminate the Federal Government's competitive disadvantage in this area, giving it an additional tool to attract and retain high quality workers and increase employee satisfaction.

Another advantage of this regulation is that it lowers the tax liability of Federal employees. Under this regulation, Federal employees will enjoy the same benefit as private sector employees and no longer will pay income tax, Social Security tax or Medicare tax on their health insurance premium dollars. This tax cut increases the take-home pay of Federal workers; Federal workers enrolled in the FEHB Program can save over \$430 per year on average.

#### **Cost Analysis**

The costs associated with this regulation are the start-up costs to implement the premium conversion program; the decrease in Medicare, Social Security, and income taxes paid by Federal employees; and the decrease in Federal employer payments to the Medicare and Social Security Trust Funds.

The start-up costs of this regulation will be incurred in the first year of the program as individual Federal Government Agencies update their payroll systems to accommodate

premium conversion and as OPM and individual Agencies educate the Federal employee population, including benefits officers, about the new program. OPM estimates the start-up cost to be \$3 million in 2001, with \$2.5 million coming from Agency implementation costs and the remaining \$.5 million from educational outreach programs such as information pamphlets for employees and benefits officers. The cost estimate is based on an assumption that each of the 164 discrete non-Postal payroll systems would incur \$15,000 in spending on systems analysis, programming, testing, and overhead.

In Fiscal Year 2001, the tax benefit to Federal employees caused by premium conversion is estimated to be about \$670 million; \$550 million in Federal income taxes, \$85 million in Social Security taxes, and \$35 million in Medicare taxes. The decrease in Federal employer payments to the Medicare and Social Security Trust Funds is estimated to be \$85 million and \$35 million dollars respectively. Assuming that health insurance premiums will continue to increase at recent rates, the change in tax benefits and Federal employer payments from premium conversion is expected to grow at roughly a proportional rate in each subsequent year.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

**Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, this interim-final rule does not

include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more.

**Federalism**

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

**List of Subjects**

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.

5 *CFR Part 892*

Administrative practice and procedure, Government employees, Health insurance, Wages, Taxes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 *CFR part 890* and adding part 892 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; § 890.303 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.

2. Amend § 890.301 to revise the heading and paragraph (e)(1) to read as follows:

**§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.**

\* \* \* \* \*

(e)(1) *Change to self only.* (1) An employee may change the enrollment from self and family to self only at any time, except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event as defined in

§ 892.101 of this chapter that affects eligibility for coverage.

\* \* \* \* \*

3. Amend § 890.304 to revise paragraph (d)(1) to read as follows:

**§ 890.304 Termination of enrollment.**

\* \* \* \* \*

(d)(1) An enrollee may cancel his or her enrollment at any time by filing an appropriate request with the employing office except that an employee participating in health insurance premium conversion as provided in part 892 of this chapter may make this change only during an open season or on account of and consistent with a qualifying life event defined in § 892.101 of this chapter that affects eligibility for coverage. The cancellation takes effect on the last day of the pay period in which the appropriate request canceling the enrollment is received by the employing office.

\* \* \* \* \*

4. Add part 892 to read as follows:

**PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS**

**Subpart A—Administration and General Provisions**

Sec.

- 892.101 Definitions
- 892.102 What is premium conversion and how does it work?
- 892.103 What can I do if I disagree with my agency's decision about my pre-or post-tax election?

**Subpart B—Eligibility and Participation**

- 892.201 Who is covered by the premium conversion plan?
- 892.202 Are retirees eligible for the premium conversion plan?
- 892.203 When will my premium conversion begin?
- 892.204 How do I waive participation in premium conversion before the benefit first becomes effective?
- 892.205 May I waive participation in premium conversion after the initial implementation?
- 892.206 Can I cancel my waiver and participate in premium conversion?
- 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?
- 892.208 Can I change from self-and-family enrollment in FEHB to self-only enrollment at any time?
- 892.209 Can I cancel FEHB coverage at any time?
- 892.210 Does premium conversion change the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment?
- 892.211 What happens if I go on leave without pay (LWOP)?

**Subpart C—Contributions and Withholdings**

- 892.301 How do I pay my premium?  
 892.302 Will the Government contribution continue?  
 892.303 Can I pay my premiums directly by check under the premium conversion plan?

**Subpart D—Reemployed Annuitants**

- 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

**Subpart A—Administration and General Provisions****§ 892.101 Definitions.**

*Days* mean calendar days.

*Dependent* means a family member who is both eligible for coverage under the FEHB Program and a dependent as defined in section 152 of the Internal Revenue Code.

*FEHB Program* means the Federal Employees Health Benefits Program described in 5 U.S.C. 8901.

*Open Season* means the period of time each year as described in § 890.301(f) of this chapter when all individuals eligible for FEHB coverage have the opportunity to enroll or change their enrollment. These changes become effective with the first pay period that begins in the following year. For additional open seasons authorized by OPM, the effective date is specified.

*OPM* means the Office of Personnel Management.

*Qualifying life event* means events that may permit election changes as described in Treasury regulations at 26 CFR 1.125-4 and includes the following:

- (1) Addition of a dependent;
- (2) Birth or adoption of a child;
- (3) Changes in entitlement to Medicare or Medicaid for you, your spouse or dependent;
- (4) Change in work site;
- (5) Change in your employment status or that of your spouse or Dependent from either full-time to part-time, or the reverse;
- (6) Death of your spouse or Dependent;
- (7) Divorce or annulment;
- (8) Loss of a Dependent;
- (9) Marriage;
- (10) Significant change in the health coverage of you or your spouse related to your spouse's employment;
- (11) Start or end of an unpaid leave of absence by you or your spouse; or
- (12) Start or end of your spouse's employment.

**§ 892.102 What is premium conversion and how does it work?**

Premium conversion is a method of reducing your taxable income by the

amount of your contribution to your FEHB insurance premium. If you are a participant in the premium conversion plan, Section 125 of the Internal Revenue Code allows you to reduce your salary (through an employer allotment) and provide that portion of your salary back to your employer. Instead of being paid to you as taxable income, this allotted amount is used to purchase your FEHB insurance for you. The effect is that your taxable income is reduced. Because taxable income is reduced, the amount of tax you pay is reduced. You save on Federal income tax, Social Security and Medicare tax and in most States and localities, State and local income taxes.

**§ 892.103 What can I do if I disagree with my agency's decision about my pre- or post-tax election?**

You may use the reconsideration procedure set out at § 890.104 of this chapter to request an agency to reconsider its initial decision affecting your participation in the premium conversion plan.

**Subpart B—Eligibility and Participation****§ 892.201 Who is covered by the premium conversion plan?**

(a) All employees in the Executive Branch of the Federal Government who are participating in the FEHB Program (as described in 5 U.S.C. 8901), and whose pay is issued by an agency of the Executive Branch of the Federal Government, are automatically covered by the premium conversion plan. Certain reemployed annuitants may be considered employees for purposes of premium conversion, as described in subpart D of this part.

(b) Employees of organizations that have established a premium conversion plan under separate authority prior to October 2000 may not participate in the premium conversion plan described here because they are already covered by their employing agency's plan.

(c) Individuals enrolled in FEHB who are not employees of the Executive Branch of the Federal government or are not employees of the Federal government, will be covered by the premium conversion plan if their employer signs an adoption agreement that is accepted by OPM.

(d) Individuals enrolled in FEHB who are appointed by an agency in the Executive Branch, but whose pay is not issued by that agency, will be covered by the premium conversion plan if the entity that makes their FEHB contribution signs an adoption agreement that is accepted by OPM.

(e) Individuals may waive premium conversion by filing a waiver form with

their employer in accordance with this part.

**§ 892.202 Are retirees eligible for the premium conversion plan?**

No, only current employees who are enrolled in the FEHB Program are covered by the premium conversion plan. Former employees are not eligible. If you are a reemployed annuitant, see subpart D of this part.

**§ 892.203 When will my premium conversion begin?**

Your salary reduction (through a Federal allotment) and pre-tax benefit become effective with the first day of the first pay period beginning on or after October 1, 2000, if you are employed in a covered Executive Branch agency as described in § 892.201(a). Otherwise, your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the first day of the first pay period beginning on or after the date that your employer officially adopts the premium conversion plan (see § 892.201(c), (d)).

**§ 892.204 How do I waive participation in premium conversion before the benefit first becomes effective?**

You must file a waiver form by the date set by your employing office, but not later than the day before the effective date of coverage. The waiver form is available from your employing office.

**§ 892.205 May I waive participation in premium conversion after the initial implementation?**

Yes, but the opportunity to waive premium conversion is limited. You may waive premium conversion:

(a) During the annual FEHB open season. The effective date of the waiver will be the first day of the first pay period that begins in the following calendar year;

(b) At the same time as you sign up for FEHB when first hired or hired as a reemployed annuitant. Employees who leave Federal service and are rehired after a three-day break in service or in a different calendar year also may waive;

(c) In conjunction with a change in FEHB enrollment, on account of and consistent with a qualifying life event (see § 892.101); or

(d) When you have a qualifying life event and the waiver is on account of and consistent with that qualifying life event (even if you do not change your FEHB enrollment). You have 60 days after the qualifying life event to file a waiver with your employer. The waiver is effective on the first day of the pay

period following the date your employer receives the waiver.

**§ 892.206 Can I cancel my waiver and participate in premium conversion?**

Yes, you may cancel a waiver and participate in premium conversion if:

(a) You have a qualifying life event; the change in FEHB coverage is consistent with the qualifying life event; and you complete an election form to participate in premium conversion within 60 days after the qualifying life event; or

(b) You cancel your waiver during an open season, including an extended open season authorized by OPM.

**§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?**

Generally, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter. However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self-and-family enrollment to self-only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations only apply to changes you may wish to make outside open season.

**§ 892.208 Can I change from self-and-family enrollment in FEHB to self-only enrollment at any time?**

If you are participating in premium conversion you may change your FEHB enrollment from self-and-family to self-only:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced, changing to self-only would be consistent with that qualifying life event. If you adopt a child, a change from self-only to self-and-family coverage would also be consistent with that qualifying life event.

**§ 892.209 Can I cancel FEHB coverage at any time?**

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season; or

(b) Within 60 days after you have a qualifying life event. Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and your spouse is employed by a company

that provides health insurance for you, then canceling FEHB coverage would be consistent with that qualifying life event. If you adopt a child, canceling coverage would not be consistent with that qualifying life event.

**§ 892.210 Does premium conversion change the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment?**

No. If you are participating in premium conversion, the effective date of an FEHB enrollment, change in enrollment, or cancellation of enrollment is the same effective date as provided in § 890.301 of this chapter.

**§ 892.211 What happens if I go on leave without pay (LWOP)?**

(a) Your commencement of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive).

(b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(2) *Pre-pay.* Prior to commencement of your LWOP you may pay the amount due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so. Contributions under the pre-pay option may be made through premium conversion on a pre-tax basis. Alternatively, you may pre-pay premiums for the LWOP period on an after-tax basis.

(3) *Direct pay.* Under the direct pay option, you may pay your share of your FEHB premium on the same schedule as payments would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) *Catch-up.* Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

**Subpart C—Contributions and Withholdings**

**§ 892.301 How do I pay my premium?**

As a participant in premium conversion, instead of having your premium withheld from after-tax salary, your salary will be reduced (through a Federal allotment) by the amount equal to your FEHB premium, which you will allot to your agency. The allotment from salary satisfies the FEHB premium payment requirement of 5 U.S.C. 8906. Your employer is authorized to accept this allotment under § 550.311(a)(8) and § 550.312 of this chapter or, for employers not subject to those regulations, a similar mechanism. Your agency will use the allotment to pay your share of your FEHB premium. This will reduce your taxable income as described in § 892.102.

**§ 892.302 Will the Government contribution continue?**

Yes, your employer will still pay the same share of your premium as provided in the Federal Employees Health Benefits Act, and § 890.501 of this chapter. Employee allotments do not count toward the Government's statutory maximum contribution.

**§ 892.303 Can I pay my premiums directly by check under the premium conversion plan?**

No, your employer must take your contribution to your FEHB premium from your salary to qualify for pre-tax treatment.

**Subpart D—Reemployed Annuitants**

**§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?**

(a) If you are a retired individual enrolled in FEHB who is receiving an annuity and you are reemployed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are automatically covered by premium conversion, unless you waive participation as described in § 892.205.

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the

government share of your FEHB coverage. Your coverage will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you elect to waive participation in premium conversion, you will keep your FEHB coverage as an annuitant, but your contributions towards your FEHB premiums will be made on an after-tax basis. Your employing agency must receive your waiver no later than 60 days after the date you return to Federal employment. A waiver will be effective at the beginning of the first pay period after your employer receives it.

(c) If you did not carry FEHB into retirement and you are reemployed as an employee in a position covered by the premium conversion plan, you may enroll in the FEHB Program as a new employee as described in § 890.301 of this chapter. Upon enrolling in FEHB, you are automatically covered by the premium conversion plan, unless you waive participation as described in § 892.205.

(d) Your status as an annuitant under the retirement regulations and your right to continue FEHB as an annuitant following your period of reemployment is unaffected.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 50

RIN 3150 AG38

#### Antitrust Review Authority: Clarification

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is clarifying its regulations to reflect more clearly its limited antitrust review authority by explicitly limiting the types of applications that must include antitrust information. Specifically, because the Commission is not authorized to conduct antitrust reviews of post-operating license transfer applications, or at least is not required to conduct this type of review and has decided that it no longer will conduct them, no antitrust information is required as part of a post-operating license transfer application. Because the current regulations do not clearly specify which types of applications are not subject to antitrust review, these

clarifying amendments will bring the regulations into conformance with the Commission's limited statutory authority to conduct antitrust reviews.

**EFFECTIVE DATE:** This final rule is effective August 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Goldberg, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-1681; e-mail JRG1@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In a license transfer application filed on October 27, 1998, by Kansas Gas and Electric Company (KGE) and Kansas City Power and Light Company (KCP&L) (Applicants), Commission approval pursuant to 10 CFR 50.80 was sought of a transfer of the Applicants' possession-only interests in the operating license for the Wolf Creek Generating Station, Unit 1, to a new company, Westar Energy, Inc. Wolf Creek is jointly owned by the Applicants, each of which owns an undivided 47 percent interest. The remaining 6 percent interest is owned by Kansas Electric Power Cooperative, Inc. (KEPCo). The Applicants requested that the Commission amend the operating license for Wolf Creek pursuant to 10 CFR 50.90 by deleting KGE and KCPL as licensees and adding Westar Energy in their place. KEPCo opposed the transfer on antitrust grounds, claiming that the transfer would have anticompetitive effects and would result in "significant changes" in the competitive market. KEPCo petitioned the Commission to intervene in the transfer proceeding and requested a hearing, arguing that the Commission should conduct an antitrust review of the proposed transfer under section 105c of the Atomic Energy Act, 42, U.S.C. 2135(c). Applicants opposed the petition and request for a hearing.

By Memorandum and Order dated March 2, 1999, CLI-99-05, 49 NRC 199 (1999), the Commission indicated that although its staff historically has performed a "significant changes" review in connection with certain kinds of license transfers, it intended to consider in the Wolf Creek case whether to depart from that practice and "direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case." In deciding this matter, the Commission stated that it expected to consider a number of factors, including its statutory mandate, its expertise, and its resources. Accordingly, the Commission directed the Applicants and KEPCo to file briefs on the single

question: "whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith." *Id.* at 200.

Because the issue of the Commission's authority to conduct antitrust reviews of license transfers is of interest to, and affects, more than only the parties directly involved in, or affected by, the proposed Wolf Creek transfer, the Commission in that case invited *amicus curiae* briefs from "any interested person or entity." CLI-99-05, 49 NRC at 200, n.1. (Briefs on the issue subsequently were received from a number of nonparties.) In addition, widespread notice of the Commission's intent to decide this matter in the Wolf Creek proceeding was provided by publishing that order on the NRC's web site and in the **Federal Register** (64 FR 11069; March 8, 1999), and also by sending copies to organizations known to be active in or interested in the Commission's antitrust activities. *Id.*

After considering the arguments presented in the briefs, and based on a thorough *de novo* review of the scope of the Commission's antitrust authority, the Commission concluded that the structure, language, and history of the Atomic Energy Act do not support its prior practice of conducting antitrust reviews of post-operating license transfers. The Commission stated:

It now seems clear to us that Congress never contemplated such reviews. On the contrary, Congress carefully set out exactly when and how the Commission should exercise its antitrust authority, and limited the Commission's review responsibilities to the anticipatory, prelicensing stage, prior to the commitment of substantial licensee resources and at a time when the Commission's opportunity to fashion effective antitrust relief was at its maximum. The Act's antitrust provisions nowhere even mention post-operating license transfers.

The statutory scheme is best understood, in our view, as an implied prohibition against additional Commission antitrust reviews beyond those Congress specified. At the least, the statute cannot be viewed as a requirement of such reviews. In these circumstances, and given what we view as strong policy reasons against a continued expansive view of our antitrust authority, we have decided to abandon our prior practice of conducting antitrust reviews of post-operating license transfers. \* \* \*

Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 446 (1999) (Wolf Creek).

##### II. Discussion

The Commission's decision in Wolf Creek was based on a thorough consideration of the documented