

# 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:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule modifying the prohibition against Federal Employees Health Benefits (FEHB) plans offering more than 2 options and 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 December 30, 2004.

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

**SUPPLEMENTARY INFORMATION:** On June 7, 2004, OPM published an interim rule in the *Federal Register* (69 FR 31721) modifying the 2-option limitation on health plans to allow FEHB plans to offer 2 options plus a high deductible plan. The regulation also modified what happens when an annuitant whose plan terminates an option doesn't make a health benefits change. Such an annuitant will only be transferred to the plan's remaining option if that option reasonably approximates the terminating option; otherwise, the annuitant will be transferred to the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

We received comments from 1 employee union, 1 Federal agency, and 1 FEHB carrier.

One commenter opposed allowing high deductible plans and health savings accounts (HSAs) in the FEHB Program. This commenter believes that a high deductible/HSA plan will attract younger healthier enrollees, leaving older, less healthy people in traditional health plans, which will drive up premiums. The commenter also believes that people will move back and forth, moving into traditional plans in years when they anticipate more medical expenses and moving back into the high deductible plan after they've had their treatment, again increasing premiums in the traditional plans. We believe that offering high deductible/HSA plans is consistent with OPM's overall goal of providing FEHB enrollees with benefit options that allow greater personal decision-making and flexibility when choosing health coverage for themselves and their families. OPM's experience with consumer-driven health plans has not shown any negative impact on the FEHB premiums. We believe that people will use the coverage as intended: spending the accounts for routine health care costs, banking the difference for future needs, and relying on the insurance portion for a catastrophic event.

One commenter said agencies would have problems programming their computer systems to accept an enrollment code ending in something other than a 1, 2, 4, or 5; the commenter suggested assigning a completely new enrollment code to any high deductible/HSA plans. The commenter also suggested that to avoid confusion these plans should be treated as separate plans, rather than options of existing plans, and should have separate brochures. These are operational issues outside the scope of the regulations. We have forwarded the suggestions to the contracting offices.

One commenter expressed concern that the term "reasonably approximate" wasn't defined, in relation to determining whether an annuitant in a terminating option should be transferred into a plan's remaining option or transferred into the standard option of the Blue Cross and Blue Shield Service Benefit Plan. Whenever a plan terminates—whether it's the whole plan, an option, or a service area enrollment code—OPM notifies agencies and retirement systems of the actions they should take regarding the

plan's enrollees. This regulatory change will not require retirement systems (or agencies) to make a determination on their own regarding whether a plan's remaining option reasonably approximates the terminating option. OPM will continue to provide specific instructions regarding terminations.

One commenter requested that OPM make it clear whether the regulatory change applies to all plans, including the Blue Cross and Blue Shield Service Benefit Plan. The commenter believes that the Service Benefit should be allowed to offer more than 2 options. The regulation as written could indeed apply to all plans. However, OPM disagrees with the commenter's interpretation of the FEHB statute regarding the Service Benefit Plan. Our interpretation is that the statute limits the Service Benefit Plan to no more than 2 options; the regulatory change does not negate the statutory provision. If at some point the language in the law is changed to allow the Service Benefit Plan to offer more than 2 options, there would be nothing in the regulatory language to preclude them from doing so.

#### 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 recordkeeping requirements, Retirement.

■ Accordingly, under the authority of 5 U.S.C. 8913, OPM is adopting its interim regulations under 5 CFR part 890 as published on June 7, 2004 (69 FR 31721), as a final rule without change.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-28545 Filed 12-29-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV05-959-1 IFR]

#### Onions Grown in South Texas; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

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

**SUMMARY:** This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2004-05 and subsequent fiscal periods from \$0.03 to \$0.02 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective January 3, 2005. Comments received by February 28, 2005, 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; fax: (202) 720-8938; e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry; McAllen, Texas 78501; telephone: (956) 682-2833, fax: (956)

682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers 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 onions beginning August 1, 2004, and continue 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 with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than

20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2004-05 and subsequent fiscal periods from \$0.03 to \$0.02 per 50-pound equivalent of onions handled.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003-04 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 3, 2004, and unanimously recommended 2004-05 fiscal period expenditures of \$145,291 and an assessment rate of \$0.03 per 50-pound equivalent of onions. The Committee subsequently met on October 28, 2004, and unanimously recommended a revised budget of \$141,819 and a reduced assessment rate of \$0.02 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$139,661. The recommended assessment rate is \$0.01 lower than the rate currently in effect. The decrease in the assessment rate is primarily due to the 2005 onion crop expected to be larger than previously estimated (5 million 50-pound equivalents vs. 4 million 50-pound equivalents). The reduced assessment rate and budget will lower handler costs by about \$50,000 and will keep the Committee's reserves at an acceptable level. At the current rate of assessment, assessment and interest income would exceed anticipated expenses by about \$11,000, and the projected reserve on July 31, 2005, would exceed the level authorized by the order.

The major expenditures recommended by the Committee for the 2004-05 fiscal period include \$76,819 for personnel and office expenses, \$30,000 for compliance, and \$35,000 for