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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 870

RIN 3206-AM67

#### Federal Employees' Group Life Insurance Program: Court Orders Prior to July 22, 1998

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

**ACTION:** Interim final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing an interim regulation to amend regulations regarding the effect of any court decree of divorce, annulment, or legal separation, or any court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation (hereinafter "court order") where the court order expressly provides that an individual receive Federal Employee's Group Life Insurance (FEGLI) benefits. The interim regulations will allow court orders submitted to the appropriate Federal agency before July 22, 1998 to be effective for providing FEGLI benefits if the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died after July 22, 1998.

**DATES:** This rule is effective December 4, 2012.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Martel, Senior Policy Analyst, at (202) 606-0004 or email: [marguerite.martel@opm.gov](mailto:marguerite.martel@opm.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 105-205, 112 Stat. 683, enacted July 22, 1998, amending section 8705 of title 5, United States Code, required benefits to be paid in accordance with

the terms of a court order instead of the otherwise existing statutory order of precedence for payment of benefits under FEGLI. On October 8, 1999, OPM published a final regulation interpreting the law to mean that only those court orders received in the appropriate office after the date the law was enacted would be valid to name a FEGLI beneficiary. The regulation amended § 870.01(d)(2), of title 5, Code of Federal Regulations.

Based on *Pascavage v. Office of Personnel Management*, 773 F. Supp.2d 452 (D. Del. 2011), OPM is changing this regulation to provide FEGLI benefits based on court orders submitted to the appropriate Federal agency before July 22, 1998, so long as the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This change is consistent with the settlement agreement in this case, *Pascavage v. Office of Personnel Management*, C.A. No.: 09-276-LPS-MPT (D. Del. filed Aug. 6, 2012).<sup>1</sup> This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died after July 22, 1998.

Under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551, et seq.) a general notice of proposed rulemaking is required unless an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. In addition, the APA exempts interpretative rules from proposed rulemaking procedures. This rule expands benefit eligibility based on a court-approved settlement agreement which requires the agency to amend current regulations in an expeditious manner. Therefore, OPM has concluded that delaying implementation of this rule due to a full notice and public comment period would be impracticable and contrary to the public interest. Further, OPM has determined that this rule is an interpretive rule implementing a court decision and adds little substantive interpretation of the law. For the foregoing reasons, OPM asserts that good cause exists to implement this rule as an interim rule under the APA, 5 U.S.C. 553(b) and

<sup>1</sup> The settlement agreement has been preliminarily approved by the Court.

accordingly, adopts this rule on that basis.

#### Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because OPM estimates there are relatively few court orders received by the appropriate office before July 22, 1998.

#### Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal employees, annuitants and their former spouses.

#### List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

**John Berry,**  
Director.

Accordingly, OPM is amending 5 CFR part 870 as follows:

#### PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104-134, 110 Stat. 1321; Sec.

870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251, and section 7(e) of Pub. L. 105-274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106-522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110-279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110-177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104-106, 110 Stat. 521.

■ 2. In § 870.801, paragraph (d)(2) is revised to read as follows:

**§ 870.801 Order of precedence and payment of benefits.**

\* \* \* \* \*

(d) \* \* \*

(2) To qualify a person for such payment, a certified copy of the court order must be received in the appropriate office before the death of the insured.

\* \* \* \* \*

[FR Doc. 2012-29164 Filed 12-3-12; 8:45 am]

BILLING CODE 6325-63-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 915

[Doc. No. AMS-FV-11-0094; FV12-915-1 FIR]

#### Avocados Grown in South Florida; Decreased Assessment Rate

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Avocado Administrative Committee (Committee) for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order for avocados grown in South Florida. The interim rule decreased the assessment rate to reflect a reduction in expenditures for research and to help reduce industry costs.

**DATES:** Effective December 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson or Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program,

AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or Email: [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, Florida avocado handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Florida avocados for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1, and ends on March 31.

In an interim rule published in the *Federal Register* on July 2, 2012, and effective on July 3, 2012, (77 FR 39150, Doc. No. AMS-FV-11-0094, FV12-915-1 IR), § 915.235 was amended by decreasing the assessment rate established for Florida avocados for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container. The decrease in the assessment rate reflects a reduction in Committee expenditures for research and will help reduce industry costs while still providing adequate funding to meet program expenses.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and around 300 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service (NASS), the average price for Florida avocados during the 2011-12 season was around \$16.50 per 55-pound bushel container and total shipments were near 1,200,000 55-bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of avocados. The Committee unanimously recommended 2012-13 expenditures of \$324,575 and an assessment rate of \$0.25 per 55-pound bushel container of avocados. The assessment rate of \$0.25 is \$0.12 lower than the rate previously in effect. Applying the \$0.25 per 55-pound bushel container assessment rate to the Committee's 1,000,000 55-pound bushel container crop estimate should provide \$250,000 in assessment income. Thus, income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover the budgeted expenses. The decrease in the assessment rate reflects a reduction in Committee expenditures for research and will help reduce industry costs.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers.