

Proposed Rules

Federal Register

Vol. 78, No. 43

Tuesday, March 5, 2013

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 850

RIN 3206-AM45

Electronic Retirement Processing

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: Pursuant to the President's January 18, 2011, Executive Order 13563—*Improving Regulation and Regulatory Review*, published in the **Federal Register**, the Office of Personnel Management (OPM) undertook a review of our regulations, to streamline and revise this part so that it better serves OPM's ongoing modernization of the processing of benefits under the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB), and the Retired Federal Employee Health Benefits (RFEHB) Programs. OPM proposes these amendments to ensure the rule reflects the electronic recordkeeping and automated retirement processing improvements being deployed by OPM, agencies, and Shared Service Centers under OPM's Human Resources Line of Business. These amendments are also being proposed to provide OPM with the flexibility to implement further improvements in automated retirement processing, recordkeeping, and electronic submission of forms and retirement applications as OPM's technological initiatives reach completion.

DATES: We must receive your comments by May 6, 2013.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206-AM54, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* combox@opm.gov. Include RIN number 3206-AM45 in the subject line of the message.

- *Mail:* John Panagakos, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415-3200.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson or Kristine Prentice, (202) 606-0299.

SUPPLEMENTARY INFORMATION: OPM proposes to amend part 850 of title 5, Code of Federal Regulations, by updating the regulations previously published at 72 FR 73573 (December 28, 2007). OPM is proceeding with its efforts to modernize its retirement processing systems and, therefore, is proposing these changes so that part 850 better reflects the automated systems OPM has developed and to afford flexibility in developing and adopting automated technologies that improve the quality and timeliness of retirement, health, and life insurance benefits processing.

To assist in meeting the ongoing objective to modernize the processing of employee and retirement benefits, we have removed references to OPM's "Retirement Systems Modernization" (RSM) initiative so that part 850 reflects OPM's current efforts in modernizing these systems. For that reason, OPM proposes renaming part 850 "Electronic Retirement Processing." This proposed rule would also amend §§ 850.101 and 850.102 by removing specific references to RSM and the electronic retirement and insurance processing system so that these subsections better reflect OPM's current modernization efforts and objectives. The proposed rule adds language in § 850.101(a) to clarify that automated technologies implemented to improve the quality and timeliness of retirement, health, and life insurance benefits processing must be accessible to people with disabilities as required by section 508 of the Rehabilitation Act, 29 U.S.C. 794(d).

The proposed rule would add definitions within § 850.103 that describe specific databases, electronic records, and processes OPM has developed, utilized, or is in the process of implementing since part 850 was first issued in 2007. Specifically, we have included definitions of OPM's Electronic Document Management System, the Electronic Official Personnel Record Folder, the Electronic

Individual Retirement Record, the Electronic Retirement Record, and the Retirement Data Repository.

The proposed rule also revises language at § 850.106(a)(4) to clarify that when there are regulatory requirements under CSRS, FERS, FEGLI, FEHB or RFEHB that require a signature be notarized, the notarization requirement may be satisfied if the notary public or other official's signature is attached to, or logically associated with, all records necessary to meet the prescribed regulations. Additionally, we have added language in the proposed rule to clarify that a person making an electronic signature must be in the physical presence of a notary or other official. However, the proposed rule would allow the Director to issue directives allowing for virtual presence if the procedures used by the notary or official (such as audio-video conferencing) have safeguards equivalent to the physical presence of the person signing.

We also propose removing the references to notice requirements under §§ 850.201(c) and 850.203(b). These requirements were included in part 850 to accommodate specific processes designed for the previous RSM effort. However, upon review, OPM has determined that under future retirement processes, OPM's standard informational material provided to annuitants and OPM's annual notices, which include information to annuitants regarding their post-retirement survivor election rights and annuity Cost-of-Living Adjustments, provide sufficient information to annuitants to satisfy the purpose of the notice requirements under §§ 850.201(c) and 850.203(b).

The proposed rule would also add specific references at § 850.301 to the Electronic Individual Retirement Record. These electronic record equivalents for the hardcopy based Individual Retirement Record (SF 2806 or SF 3100) are, or will be, provided to OPM by agencies and Shared Service Centers through the electronic data feeds for storage in OPM's Retirement Data Repository databases. Section 850.301 would also be amended to add a reference to OPM's Electronic Document Management System, which is a database of electronic images of hardcopy documents imaged and stored during OPM's RSM initiative.

Additionally, we propose removing subsection (c) from section 850.301, which requires OPM to retain documents in accordance with requirements under title 44, United States Code, after they have been imaged or converted to electronic records. Because title 44, United States Code, provides the requirements federal agencies must follow in retaining documents after they have been converted to electronic records, the additional requirements noted under § 850.301(c) regarding retention are unnecessary.

Finally, OPM has received many requests from agencies to allow them the ability to submit electronically notices of law enforcement officer, firefighter, or nuclear materials retirement coverage required by §§ 831.811(a), 831.911(a), 842.808(a), or 842.910(a). To accommodate these requests, we have included instructions under § 850.401 on how to submit these notices electronically and propose amending this section to require agencies and other entities to use this method when submitting future notices.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the purpose of this regulation is to assist in facilitating OPM's ongoing modernization of the processing of benefits under CSRS, FERS, FEGLI, FEHB, and RFEHB.

List of Subjects in 5 CFR Parts 850

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 850 as follows:

PART 850—RETIREMENT SYSTEMS MODERNIZATION

■ 1. The authority citation for part 850 continues to read as follows:

Authority: 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; sec. 9 of Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended by sec. 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

- 2. The heading for part 850 is revised as above to read as follows:
- 3. Revise § 850.101 to read as follows:

§ 850.101 Purpose and scope.

(a) The purpose of this part is to enable changes to OPM's retirement and insurance processing systems to improve the quality and timeliness of services to employees and annuitants covered by CSRS and FERS by using contemporary, automated business processes and supporting accessible technologies. By utilizing these automated processes, OPM will employ more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB, and RFEHB benefits processed by or at the direction of OPM. Those regulatory provisions that would otherwise apply were established for a hardcopy based retirement and insurance benefits processing system that may eventually be phased out but which will continue to operate concurrently with OPM's modernization efforts. During the phased transition to electronic retirement and insurance processing, certain regulations that were not designed with information technology needs in mind, and which are incompatible with electronic business processes, must be set aside with respect to electronic retirement and insurance processing. The regulations set forth in this part make the transition to electronic processing possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using hardcopy records.

- 4. Revise § 850.103 to read as follows:

§ 850.103 Definitions.

In this part—

Agency means an Executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; the U.S. Postal

Service; the Postal Regulatory Commission; and the District of Columbia government.

Biometrics means the technology that converts a unique characteristic of an individual into a digital form, which is then interpreted by a computer and compared with a digital exemplar copy of the characteristic stored in the computer. Among the unique characteristics of an individual that can be converted into a digital form are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

Cryptographic control method means an approach to authenticating identity or the authenticity of an electronic document through the use of a cipher (i.e., a pair of algorithms) which performs encryption and decryption.

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Digital signature means an electronic signature generated by means of an algorithm that ensures that the identity of the signatory and the integrity of the data can be verified. A value, referred to as the "private key," is generated to produce the signature and another value, known as the "public key," which is linked to but is not the same as the private key, is used to verify the signature.

Digitized signature means a graphical image of a handwritten signature usually created using a special computer input device (such as a digital pen and pad), which contains unique biometric data associated with the creation of each stroke of the signature (such as duration of stroke or pen pressure). A digitized signature can be verified by a comparison with the characteristics and biometric data of a known or exemplar signature image.

Director means the Director of the Office of Personnel Management.

Electronic communication means any information conveyed through electronic means and includes electronic forms, applications, elections, and requests submitted by email or any other electronic message.

Electronic Document Management System (EDMS) means the electronic system of images of hardcopy individual retirement records (SF 2806 and SF 3100) and other retirement-related documents.

Electronic Official Personnel Record Folder (eOPF) means an electronic version of the hardcopy Official Personnel Folder (OPF), providing Web-enabled access for federal employees and HR staff to view eOPF documents.

Electronic Individual Retirement Record (eIRR) means a web-based database that contains certified electronic closeout and fully paid post-56 military service deposit Individual Retirement Records (IRRs), also known as Standard Form (SF) 2806 and SF 3100. The eIRR is stored in the Electronic Individual Retirement Record records storage database (formerly known as the Individual Retirement Record Closeout Data Capture or ICDC records storage database).

Employee means an individual, other than a Member of Congress, who is covered by CSRS or FERS.

Enterprise Human Resources Integration (EHRI) Data System means the comprehensive electronic retirement record-keeping system that supports OPM's retirement processing across the Federal Government.

Electronic Retirement Record (ERR) means the certified electronic retirement record submitted to OPM as a retirement data feed in accordance with the Guide to Retirement Data Reporting. The ERR is submitted to OPM whenever an Agency would otherwise submit a hardcopy IRR to OPM.

FEGLI means the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code.

FEHB means the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

FERS means the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Member means a Member of Congress as defined by section 2106 of title 5, United States Code, who is covered by CSRS or FERS.

Non-cryptographic method is an approach to authenticating identity that relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application.

Personal identification number (PIN) or password means a non-cryptographic method of authenticating the identity of a user of an electronic application, involving the use of an identifier known only to the user and to the electronic system, which checks the identifier against data in a database to authenticate the user's identity.

Public/private key (asymmetric) cryptography is a method of creating a unique mark, known as a digital signature, on an electronic document or file. This method involves the use of two computer-generated, mathematically-linked keys: A private signing key that is kept private and a

public validation key that is available to the public.

Retirement Data Repository means a secure centralized data warehouse that stores electronic retirement data of employees covered under the Civil Service Retirement System or the Federal Employees Retirement System compiled from multiple sources including agencies and Shared Service Centers.

RFEHB means the Retired Federal Employees Health Benefits Program established under Public Law 86-724, 74 Stat. 849, 851-52 (September 8, 1960), as amended.

Shared Service Centers means processing centers delivering a broad array of administrative services to multiple agencies.

Shared symmetric key cryptography means a method of authentication in which a single key is used to sign and verify an electronic document. The single key (also known as a "private key") is known only by the user and the recipient or recipients of the electronic document.

Smart card means a plastic card, typically the size of a credit card, containing an embedded integrated circuit or "chip" that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that may be embedded on the same card.

■ 5. Amend § 850.106 by revising paragraph (a)(4) to read as follows:

§ 850.106 Electronic signatures.

(a) * * *

(4)(i) In general, any regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that a signature be notarized, certified, or otherwise witnessed, by a notary public or other official authorized to administer oaths may be satisfied by the electronic signature of the person authorized to perform those acts when such electronic signature is attached to or logically associated with all other information and records required to be included by the applicable regulation.

(ii) Except as provided in paragraph (iii), a person signing a consent or election for the purpose of electronic notarization under paragraph (i) must be in the physical presence of the notary public or an official authorized to administer oaths.

(iii) The Director may provide in directives issued under § 850.104 that alternative procedures utilized by a notary public or other official authorized to administer oaths (such as audio-video conference technology) will be deemed to satisfy the physical presence requirement for a notarized,

certified, or witnessed election or consent, but only if those procedures with respect to the electronic system provide the same safeguards as are provided by physical presence.

* * * * *

■ 6. Revise § 850.201 to read as follows:

§ 850.201 Applications for benefits.

(a) Hardcopy applications and related submissions that are otherwise required to be made to an individual's employing agency (other than by statute) may instead be submitted electronically in such form as the Director prescribes under § 850.104.

(b) Data provided under subpart C of this part are the basis for adjudicating claims for CSRS and FERS retirement benefits, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants, under this part.

§ 850.202 [Amended]

■ 7. Amend § 850.202 by removing paragraphs (b)(1) and (b)(2).

■ 8. Revise § 850.203 to read as follows:

§ 850.203 Other elections.

Any other election may be effected in such form as the Director prescribes under § 850.104. Such elections include but are not limited to elections of coverage under CSRS, FERS, FEGLI, FEHB, or RFEHB by individuals entitled to elect such coverage; applications for service credit and applications to make deposit; and elections regarding the withholding of State income tax from annuity payments.

■ 9. Revise § 850.301 to read as follows:

§ 850.301 Electronic records; other acceptable records.

(a) Acceptable electronic records for retirement and insurance processing by OPM include—

(1) Electronic employee data, including an eIRR or an ERR, submitted by an agency, agency payroll office, or Shared Service Center, or other entity and stored within the EHRI Retirement Data Repository, the eIRR records storage database, or other OPM database.

(2) Electronic Official Personnel Folder (eOPF) data; and

(3) Documents, including hardcopy versions of the Individual Retirement Record (SF 2806 or SF 3100), or data or images obtained from such documents, including images stored in EDMS, that are converted to an electronic or digital form by means of image scanning or other forms of electronic or digital conversion.

(b) Documents that are not converted to an electronic or digital form will

continue to be acceptable records for processing by the retirement and insurance processing system.

■ 10. Revise § 850.401 to read as follows:

§ 850.401 Electronic notice of coverage determination.

An agency or other entity that submits electronic employee records directly or through a Shared Service Center must include in the notice of law enforcement officer, firefighter, or nuclear materials retirement coverage, required by §§ 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this chapter, the position description number, or other unique alphanumeric identifier, in the notice for the position for which law enforcement officer, firefighter, or nuclear materials courier retirement coverage has been approved. Agencies or other entities must submit position descriptions to OPM in a PDF document to combox address: *combox@opm.gov*. [FR Doc. 2013-04965 Filed 3-4-13; 8:45 am]

BILLING CODE 6325-38-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS-FV-12-0052; FV12-905-2 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Revising Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed change to reporting requirements prescribed under the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) is responsible for local administration of the order. This action would require all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information would enable the Committee to more efficiently administer the order and improve communication with growers. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) of a new information collection.

DATES: Comments on the proposed rulemaking must be received by May 6,

2013. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by May 6, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, 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: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation 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*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in 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."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. A 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 proposed rule would revise the reporting requirements prescribed under the order. This action would require all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information would enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This proposed change was unanimously recommended by the Committee at a July 17, 2012, meeting.

Section 905.71 of the order provides the Committee, with the approval of the Secretary, authority to collect information from handlers that is deemed necessary for administering the order. This proposed rule would utilize this authority to establish a new § 905.171 under the rules and regulations of the order. This new section would require handlers of fresh citrus to report to the Committee a list of names and contact information for all growers whose fruit they have shipped by June 15 of each season.

Currently, the Committee does not require handlers to report any information regarding the growers who supply them. In order to communicate with its grower base regarding the order or Committee actions, the Committee depends on mailing lists from other industry groups. However, third-party lists are often incomplete, out of date, or do not distinguish between those growing for the fresh market or those growing for the processed market.

Ninety percent of the volume of citrus produced in Florida is sold for processing into juice, which is not regulated under the order. Consequently, while there are an estimated 8,000 citrus growers, it is estimated only 750 growers produce for