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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AI33

Federal Employees Health Benefits Program: Contributions and Withholdings

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to describe procedures for OPM's annual determination of the weighted average of subscription charges in effect for self only and for self and family enrollments under the Federal Employees Health Benefits (FEHB) Program. The determinations are a requirement under recent amendments to the FEHB law which authorize a new Government contribution toward FEHB enrollment charges effective with the contract year beginning in January 1999, which generally pays 72 percent of the weighted average of subscription charges.

DATES: Interim regulations are effective August 28, 1998. We must receive comments on or before September 28, 1998.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or hand deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Bonnie R. Rose (202) 606-0004.

SUPPLEMENTARY INFORMATION: The Balanced Budget Act of 1997, approved on August 5, 1997 (Public Law 105-33,

sec. 7002, 111 Stat. 662), amended the Federal Employees Health Benefits (FEHB) law to authorize a new Government contribution formula effective on the first day of the contract year that begins in January 1999. In place of the "Big-6" formula, which evolved under FEHB law during the early 1970's, the new formula bases Government contributions on the program-wide weighted average costs, for self only and for self and family enrollments, respectively.

The Big-6 formula provided a Government contribution for eligible enrollees in any FEHB plan or option equal to the lesser of: (1) 60 percent of the simple average of self only or self and family enrollment charges for the highest level of benefits offered under six large plans described in law, or (2) 75 percent of charges for the particular plan an individual elects to enroll in. Initially, the Big-6 formula effectively linked Government contributions to health plan preferences of a majority of FEHB enrollees.

Over time, though, FEHB enrollees increasingly left high option health plans which were the basis of the Big-6 formula and dispersed themselves among other plans. During the 1970's and 1980's, the FEHB Program expanded from several dozen to several hundred health plans and health care inflation and rapid health plan premium increases during this period encouraged enrollees to more carefully evaluate all options. One distinct component of the Big-6 formula, the Governmentwide Indemnity Benefit Plan, decided to terminate FEHB participation at the end of 1989 due to escalating premiums and declining enrollment. Because the average of premiums under the five remaining Big-6 plans would have resulted in lower Government contributions, Congress enacted temporary legislation to continue the Big-6 calculation by using premiums for the five remaining formula plans and a so-called phantom premium in place of the lapsed plan. The phantom formula effectively held the Government contributions near 72 percent of total program costs and was due to expire at the end of 1998 in the absence of further action by Congress.

The 1997 amendments to the FEHB law require a determination by the Office of Personnel Management (OPM) in advance of each contract year of the

weighted average of subscription charges that will be in effect during the year under all FEHB plans, for self only and for self and family types of enrollment, respectively. For employees and annuitants generally, the law provides a Government contribution equal to the lesser of: (1) 72 percent of the amount OPM determines is the program-wide weighted average of subscription charges for the type of enrollment the individual selects, or (2) 75 percent of the subscription charge for a particular plan (5 U.S.C. § 8906 (a) and (b)). The intent of the new FEHB contribution formula, which is referred to as the "Fair Share" formula, is to maintain a consistent level of Government contributions, as a percent of the total program costs, regardless of the configuration of participating health plans or FEHB enrollment patterns.

The law requires OPM's determination of the amounts of the weighted average of subscription charges for each FEHB contract year, for self only and for self and family enrollments, not later than October 1 immediately preceding the beginning of the contract year in January. By expressed provision of law, the weight given to each subscription charge that will be in effect for the following FEHB contract year must be commensurate with the number of enrollees eligible for a Government contribution and enrolled for the same plan or option as of March 31 of the year in which the determination is being made. Thus, OPM will multiply each subscription charge that will be in effect for the next contract year by the number of eligible enrollees who are in the plan and option to which the charge applies as of March 31 immediately preceding the contract year. We will then compute the total-dollar subscription charge amounts for all self only enrollments and for all self and family enrollments respectively. Finally, we will divide each dollar total by the corresponding total numbers under each enrollment type to achieve the program-wide weighted average costs.

The FEHB law is very clear regarding the methodology for determining the program-wide weighted average of subscription charges in cases where health plans continue participation substantially unchanged from year to year. OPM is issuing regulations to explain how we intend to treat plans for

purposes of determining the program-wide weighted average of subscription charges when conditions of a plan's FEHB participation change from one year to the next, including cases in which plans enter the FEHB Program, cease participation, or merge with another FEHB plan, and cases in which a health maintenance organization alters its previous rating structure.

The regulations provide that OPM will proceed with our determination of the program-wide weighted average of subscription charges for the following contract year on September 1. If OPM and the carrier of any health plan which has applied to continue FEHB participation have not closed rate negotiations for the following contract year by September 1, the regulations state that OPM will apply deemed adjustments to such plan's current-year self only and self and family subscription charges for purposes of including enrollees of the plan in the determination of the coming year's program-wide weighted average of subscription charges. The deemed adjustments will be equal to any increase or decrease that OPM finds to exist in a calculation of the weighted-average of subscription charges using only those plans with which OPM has closed rate negotiations for the following contract year by September 1. There will be no readjustment in the program-wide weighted average charges based on rate negotiations closed after September 1.

We expect deemed adjustments to be infrequent because provisions in 5 CFR 890.203 require all FEHB plans to submit benefit and rate proposals to OPM not less than 7 months before a new contract year. However, the regulations will ensure that OPM can complete determination of program-wide weighted average charge amounts for each contract year by October 1 of the preceding year, as the law requires, and that complete information to assist enrollees in comparing health plan features is available at the start of the annual open enrollment period in November.

Since newly participating or terminating FEHB plans inherently lack one of two requisite data needed for determining the program-wide weighted average of subscription charges, namely, previous enrollment or subscription charges for the following contract year, the regulations exclude data associated with these plans from these determinations. If two or more existing FEHB plans merge, or if a two-option plan ceases to offer one of the options, the regulations state that OPM will use the combined enrollments from the

merging plans, or the two plan options, for purposes of weighting the subscription charges for the successor entity.

Contracts with comprehensive medical plans (CMPs) may include different rates for specified portions of the plan's service area and will assign a distinct enrollment code for each rating area. Such plans occasionally decide to split the existing rating area(s) into two or more new areas or to reconfigure geographic areas covered by existing rating codes. When this occurs, there may not be a direct correlation between the plan's current-year enrollment and rating codes for the following contract year for purposes of determining the weight to be given to each new subscription charge. So, where a participating CMP plan is altering its FEHB rating structure for the following contract year, the regulations provide that OPM will estimate what portion of the total enrollments under all rating codes for the same plan on March 31 of the determination year correlates to each of the plan's rating codes for the following contract year.

Finally, we are removing existing provisions in paragraph 5 CFR 890.501(b), and the reference to paragraph (b) in 5 CFR 890.501(a), which reflect FEHB law in effect prior to 1974 amendments to the Government contribution formula (Public Law 93-246, section 1, 88 Stat. 3).

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. These regulations essentially expound on a requirement in the FEHB law, which includes a prescribed methodology, for OPM to make a determination of the weighted average of subscription charges in effect under all FEHB plans in each contract year after 1998. Accordingly, notice of proposed rulemaking and public procedure thereon are unnecessary. Also, good cause exists for making these rules effective in less than 30 days. The law gives OPM some discretion regarding the time frame for making the required determination. For purposes of including information on Government contributions in materials for the annual FEHB open enrollment period in November, OPM concludes that determination of the weighted average of subscription charges must proceed on September 1 each year, beginning with 1998.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal Government contributions toward enrollment costs under the Federal Employee 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 professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations 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; § 890.803 also issued under 50 U.S.C. 403p, 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.

Subpart E—Contributions and Withholdings

2. Amend § 890.501 by revising paragraphs (a) and (b) to read as follows:

§ 890.501 Government contributions.

(a) The Government contribution toward subscription charges under all health benefits plans, for each enrolled employee who is paid biweekly, is the amount provided in section 8906 of title 5, United States Code, plus 4 percent of that amount.

(b) In accordance with the provisions of 5 U.S.C. 8906(a) which take effect with the contract year that begins in January 1999, OPM will determine the amounts representing the weighted average of subscription charges in effect for each contract year, for self only enrollments and for self and family enrollments, as follows:

(1) The determination of the weighted average of subscription charges will only include those health benefits plans

which are continuing FEHB Program participation from one contract year to the next.

(i) If OPM and the carrier for a plan that will continue participation have closed negotiations on rates for the upcoming contract year by September 1 of the current contract year, i.e., the determination year, OPM will use the plan's negotiated subscription charges for the upcoming contract year in the determination of the weighted average of subscription charges.

(ii) If OPM and the carrier for a plan that applied to continue participation have not closed rate negotiations for the upcoming contract year by September 1 of the determination year, OPM will make a deemed adjustment to such plan's subscription charges for the current contract year for purposes of counting eligible enrollees of the plan in the determination of weighted average charges for the upcoming contract year. The deemed adjustment will equal any increase or decrease OPM finds in its determination of the weighted average of subscription charges for the upcoming contract year for all plans with which OPM has closed rates on September 1 of the determination year.

(iii) There will be no subsequent adjustment in the weighted average charges applicable to the upcoming contract year to reflect rate negotiations closed after September 1 of the determination year.

(2) Except as otherwise specified in paragraphs (b)(2) (i) and (b)(2)(ii) of this section, the weight OPM gives to each subscription charge for purposes of determining the weighted average of subscription charges for the upcoming contract year will be proportionate to the number of individuals who, as of March 31 of the determination year, are enrolled in the plan or benefits option to which such charge applies and are eligible for a Government health benefits contribution in the upcoming contract year.

(i) When a subscription charge for an upcoming contract year applies to a plan that is the result of a merger of two or more plans which contract separately with OPM during the determination year, or applies to a plan which will cease to offer two benefits options, OPM will combine the self only enrollments and the self and family enrollments from the merging plans, or from a plan's two benefits options, for purposes of weighting subscription charges in effect for the successor plan for the upcoming contract year.

(ii) When a comprehensive medical plan (CMP) varies subscription charges for different portions of the plan's service area and the plan's contract for

the upcoming contract year will reconfigure geographic areas associated with subscription charges, so that there will not be a direct correlation between enrollment in the determination year and rating areas for the upcoming contract year, OPM will estimate what portion of the plan's enrollees on March 31 of the determination year will be subject to each of the plan's subscription rates for the upcoming contract year.

(3) After OPM weights each subscription charge as provided in paragraphs (b)(2), (b)(2)(i), and (b)(2)(ii) of this section, OPM will compute the total of subscription charges associated with self only enrollments, and the total of subscription charges associated with self and family enrollments. OPM will divide each subscription charge total by the total number of enrollments such amount represents to obtain the program-wide weighted average subscription charges for self only and for self and family enrollments, respectively.

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[FR Doc. 98-23149 Filed 8-27-98; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-98-004]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this final rule decreases by one-hundredth of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1997 five-market average price for domestic barrows and gilts. This action brings the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act and the Paperwork Reduction Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 1,000 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601).

This final rule decreases the amount of assessments on imported pork and pork products subject to assessment by one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-