

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 894

RIN 3206-AL78

### Changes in the Federal Employees Dental and Vision Insurance Program

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing final regulations on changes in the Federal Employees Dental and Vision Insurance Program (FEDVIP). We are amending the regulations to authorize retroactive enrollment changes when an enrollee has lost his or her spouse through death or divorce or the enrollee's last eligible child dies, marries, or reaches age 22. We are also amending the regulations to add that an individual may enroll 31 days before the enrollee or an eligible family member loses other dental and/or vision coverage. We are amending the regulations to clarify the reference to excluded positions in 5 U.S.C. 8901(1). We are also including in the regulations certain former Senate restaurant employees who were employees of the Architect of the Capitol as individuals who are eligible to elect to continue enrollment in FEDVIP if they are eligible and elect to continue their retirement coverage.

**DATES:** Effective May 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ron Brown, (202) 606-0004, or e-mail at [ronald.brown@opm.gov](mailto:ronald.brown@opm.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

On December 23, 2004, Public Law 108-496, 118 Stat. 4001, was signed into law. This law established a dental benefits and vision benefits program for Federal employees, annuitants, and

their eligible family members. The first effective date of coverage was December 31, 2006. The existing regulations allow an enrollment change based on a Qualifying Life Event (QLE) only when the enrollee requests it during the period beginning 31 days before the QLE and ending 60 days after the QLE. The change in enrollment is effective the first day of the first pay period following the date of the request. If the enrollee has no more eligible family members and he or she misses the 60-day time limit, there is no provision that will allow for the change in enrollment to be made retroactive to the first day of the first pay period following the date the family member lost eligibility. Enrollees are being forced to pay for a family enrollment or a self plus one enrollment even though their family members are deceased or no longer eligible for coverage, until the next Open Season opportunity to change enrollment. This amendment will lift the deadline by which such an enrollee must change his or her enrollment and will allow the enrollment change to take effect retroactively when the enrollee has a self plus one enrollment and his or her family member dies or loses eligibility, through divorce or when the dependent child marries or reaches age 22. This amendment will also allow retroactive enrollment changes from a family enrollment that includes two family members to a self plus one enrollment if one of the family members loses eligibility (i.e., when there is a death or divorce, or when a dependent child marries or reaches age 22).

When an eligible family member loses dental or vision coverage, the existing regulations allow the enrollee to increase his or her type of enrollment during the period beginning 31 days before the event and ending 60 days after the event. However, the regulations allow an employee who is not enrolled, and who loses his or her other dental or vision coverage, to enroll within 60 days after the event. This amendment will correct this inconsistency and allow an employee who loses other dental or vision coverage to enroll from 31 days before until 60 days after the event.

The existing regulations (5 CFR 894.302) state that excluded positions are described in 5 U.S.C. 8901(1)(I). This amendment will clarify that excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv).

Public Law 110-279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee, who is an employee of the Architect of the Capitol on the date of enactment and who accepts employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are revising the FEDVIP regulations to address continuation of coverage for these individuals.

On June 2, 2009, OPM published proposed regulations in the **Federal Register** (74 FR 26302-26303) and comments were requested by August 3, 2009.

OPM received one comment from a FEDVIP enrollee who requested that OPM allow FEDVIP enrollees to cancel their coverage when their dental or vision provider terminates participation in the Program. When the Program began, OPM determined that it would create a financial hardship on the participating dental and vision plans if we allowed enrollees to cancel at anytime. OPM also advises prospective FEDVIP enrollees that the participation of any one provider cannot be guaranteed. Therefore, we will not consider the termination of the participation of a provider as a Qualifying Life Event to allow a cancellation of enrollment. The regulation as proposed has not been changed.

#### 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 dental and vision benefits of Federal employees and annuitants.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that

this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

#### List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

**John Berry,**  
Director.

■ Accordingly, OPM amends 5 CFR part 894 as follows:

#### PART 894—FEDERAL EMPLOYEES DENTAL AND VISION PROGRAM

■ 1. The authority citation for part 894 is revised to read as follows:

**Authority:** 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Pub. L. 110–279, 122 Stat. 2604.

#### Subpart C—Eligibility

■ 2. Revise § 894.301 to read as follows:

##### § 894.301 Am I eligible to enroll in the FEDVIP?

You are eligible if—

(a) You meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position;

(b) You are an employee of the United States Postal Service or the District of Columbia courts; or

(c)(1) You were employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern; and

(2) You accepted employment by the business concern and elected to continue your Federal retirement benefits and your FEDVIP coverage. You continue to be eligible for FEDVIP coverage as long as you remain employed by the business concern or its successor.

■ 3. Revise § 894.302 introductory text to read as follows:

##### § 894.302 What is an excluded position?

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

\* \* \* \* \*

#### Subpart E—Enrollment and Changing Enrollment

■ 4. Revise § 894.501(d) to read as follows:

##### § 894.501 When may I enroll?

\* \* \* \* \*

(d) From 31 days before you or an eligible family member loses other dental/vision coverage to 60 days after a QLE that allows you to enroll.

■ 5. Revise § 894.510(c) and (d) to read as follows:

##### § 894.510 When may I decrease my type of enrollment?

\* \* \* \* \*

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

(i) A decrease in your self plus one enrollment;

(ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible family member; or

(iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible family members.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

(2) If you are making an enrollment change described in paragraph (c)(2) of this section, your change in enrollment is effective on the first day of the first pay period following the QLE on which the enrollment change is based.

\* \* \* \* \*

[FR Doc. 2010–8944 Filed 4–19–10; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 929

[Doc. No. AMS–FV–09–0073; FV10–929–1 FR]

#### Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to Reporting Dates

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes reporting dates prescribed under the marketing

order that regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is administered locally by the Cranberry Marketing Committee (Committee). This rule revises the due dates of handler reports to provide more time for handlers to file their reports with the Committee, and would improve handler compliance with the order's reporting regulations.

**DATES:** *Effective Date:* April 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov) or [Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, 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 final rule 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