

NTEU Questions and IRS Responses regarding the OPM FEHB Expansion

1. When will the 60-day period during which enrollments be accepted start, i.e., is it November 17th?

IRS Response:

The 60-day period starts when an employee is notified of their eligibility. Newly eligible employees will be mailed a letter the week of November 17th at their home address. Coverage will become effective the first day of the first pay period that begins after the date the IRS receives their SF-2809, Health Benefits Election form and that follows a pay period during any part of which the employee is in pay status. After they are enrolled, coverage will start in Jan. 2015? Coverage would begin the pay period after the Ogden Payroll Center (OPC) receives their SF-2809 election form provided they were in pay status the pay period prior to receipt of the form. Otherwise, coverage will not be effective until the pay period after the employee returns to duty. If eligible employees do not make an election within the 60 day time frame, they will have to wait for open season or another qualifying life event.

2. Who will the IRS announce this change to and how?

IRS Response:

Employees currently listed as ineligible for health benefits but who may meet the requirements are being identified and notified by home mail, the week of November 17th of their opportunity to enroll. To all of those returning seasonals who currently meet the new eligibility requirements? See response above.

3. With respect to those employees who have yet to be recalled, how will they be notified?

IRS Response:

These employees are included in the listing for item # 2 (notified by home mail).

4. With respect to new-hires that are coming on board right now – if they are expected to be in work status for 3 months per year/130 hours per month, are they entitled to enroll now?

IRS Response:

New hires who meet the new eligibility requirements will be notified when they come on board that they have the 60 day opportunity to enroll in health benefits coverage based on the changes.



Benefits Administration Letter

Number: 14-210

Date: October 20, 2014

Subject: Federal Employees Health Benefits (FEHB) Program Modification of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules

Background

To further the goal of providing affordable health insurance to Federal employees, the United States Office of Personnel Management (OPM) has issued a final rule modifying coverage under the Federal Employees Health Benefits (FEHB) Program to include certain temporary, seasonal, and intermittent employees who are identified as full-time employees. This regulation makes FEHB coverage available to these newly eligible employees no later than January 2015.

This regulatory modification of eligibility is intended to ensure, to the greatest extent practicable, that full-time employees, within the meaning of section 4980H of the Internal Revenue Code (IRC) and Treasury regulations thereunder (79 FR 8544, February 12, 2014) are eligible to enroll in FEHB. Under this regulation, a full-time employee is defined as an employee who is employed on average 130 hours in a calendar month.

The final regulation is available here:

<http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24652.pdf>

Prior to this final regulation, most employees on temporary appointments became eligible for FEHB coverage after completing one year of current continuous employment and, once eligible, did not receive an employer contribution to premium. Employees working on seasonal schedules for less than six months in a year and those working intermittent schedules were excluded regardless of the work hours for which they were expected to be scheduled. Some limited exceptions were made to these exclusions for temporary firefighters and emergency response workers in 2012 in 5 CFR 890.102(h) and (i).

Under this final regulation, employees on temporary appointments, employees on seasonal schedules who will be working a schedule of less than six months per year, and intermittent employees who are expected to work 130 hours per month or more for at least 90 days will be eligible to enroll in an FEHB plan. These newly eligible employees will receive the same government contribution as full-time permanent employees.

Those temporary employees working for 12 consecutive months who are already eligible to enroll in the FEHB Program and who are expected to work for 130 hours per month for at least 90 days will now be eligible to receive a full employer contribution toward the FEHB premium.

This final rule follows a notice of proposed rulemaking published July 29, 2014. During the 30 day comment period for that proposed rule we received questions from Federal agencies and shared service providers. Many of those questions were addressed in the preamble to the final rule. Please review the final rule carefully in case your question is not addressed here.

Additional information

We have included with this letter an informational Q&A that will help agencies as they implement this FEHB modification. Please distribute this information promptly to agency staff that may need it.

For questions about the FEHB Program and this regulation, please contact Marguerite Martel, Senior Policy Analyst at 202-606-0004 or email at Marguerite.Martel@opm.gov.

Agency headquarters offices may also send questions concerning interpretation and technical guidance on FEHB law, regulations and policy to fehb@opm.gov. Agency field offices should contact their headquarters.

Employees should direct questions to their Human Resources Office.

Sincerely,

John O' Brien
Director
Healthcare and Insurance

Operational Questions and Answers for Implementing the FEHB Eligibility Modification

When can newly eligible employees enroll and when are they effective?

Enrollments for newly eligible employees will be accepted during a 60 day period after the employing office notifies employees of their eligibility to enroll in a FEHB health plan. Coverage will become effective as provided for by 5 C.F.R. 890.301 (the first day of the first pay period that begins after the date the employing office receives an appropriate request and that follows a pay period during any part of which the employee is in pay status). Employing offices should determine eligibility of existing temporary, seasonal, and intermittent employees, and upon determining eligibility, promptly offer employees an opportunity to enroll in the FEHB Program so that coverage becomes effective no later than January 2015. Employing offices will continue to determine eligibility of individuals first employed after the effective date of this regulation.

How will eligible employees be identified?

Employing agencies will be responsible for identifying newly eligible employees, as they are now. Employing agencies will work with their HR and payroll providers to correctly identify newly eligible temporary, seasonal, and intermittent employees, record their selection of FEHB coverage and withhold the employee share of premium from wages.

What happens if employees originally expected to meet the criteria for enrollment work fewer hours?

Employing agencies must make a prospective determination at time of hire, or at the time the rule becomes effective, about whether a newly eligible temporary, seasonal, or intermittent employee is likely to meet the criteria to be included in the eligibility modification. Employing agencies do not have to report to OPM about how that determination is made. If the employing agency determines that the individual is eligible, but that employee actually works fewer hours, coverage cannot be rescinded based on actual hours worked. For this reason, OPM expects that agencies will use their best judgment in extending benefits to temporary, seasonal, and intermittent employees.

What happens if a full-time employee is expected to work for fewer than 90 days, but the employee actually works for 90 days or more?

A full-time employee who is expected to work for fewer than 90 days is considered to be in a 90 day waiting period and no offer of FEHB coverage should be made. If the expectation changes, that employee should be notified by the employing office and given an opportunity to enroll promptly, but no later than the 91st day of employment. FEHB coverage would be prospective, as it is in most circumstances, rather than retroactive to the first day of employment.

What is the earliest date a newly eligible employee could get coverage?

The effective date of this rule is November 17, 2014. Employing agencies should be prepared to offer coverage at that time. This final rule is being published now so that newly eligible full-time temporary, seasonal, and intermittent employees can be enrolled no later than January 2015.

Will the employing agency pay the same government contribution to premium as for other FEHB enrollees?

Eligible full-time temporary, seasonal, and intermittent employees will receive a full government contribution to premium. The Part Time Career Act allows agencies to prorate the government contribution for certain employees working between 16 and 32 hours per week. However, the Part Time Career Act specifically excludes temporary and intermittent employees. As such, employing agencies are not authorized to pay a prorated premium for any temporary or intermittent employees.

Do employing agencies have to count work hours for each employee during a calendar month?

To implement this FEHB eligibility modification, employing agencies must make a prospective determination about how many hours each temporary, seasonal, and intermittent employee is expected to work and about whether the employee is expected to work for at least 90 days. That prospective determination is an estimate of the hours that the employee will work, rather than an actual count of hours worked.

Can employing agencies use a pay-period based timekeeping system rather than a calendar month based system?

OPM expects that agencies will continue to use their pay-period based timekeeping systems. There is no requirement that agencies or shared service providers use a calendar month based timekeeping system in order to make the prospective determination about full-time status of newly eligible employees. The final rule references calendar month hours so that the rule's definition of full-time is consistent with the definition in the IRS regulations.

Do the same rules apply regarding break-in-service, continuity of coverage, and non-pay status for newly eligible employees as for those who were already eligible to participate in FEHB?

Generally, all the same rules about break-in-service, continuity of coverage, and non-pay status would apply for these newly eligible employees as for all other employees.

Will OPM issue a new form 2809?

OPM is reviewing all forms and may make changes to forms and instructions in the future. Agencies can continue to use the current form 2809 to record new FEHB enrollments.

Should agencies identify those already on the payroll that now qualify for enrollment?

Yes, agencies should review employment records and determine which temporary, seasonal, and intermittent employees qualify for an offer of FEHB coverage. Agencies should make an offer of coverage promptly so that coverage can be effective no later than January 2015.

Which agencies are eligible to request the waiver described in paragraph (k)?

Generally, Federal agencies would not qualify for a waiver and must take steps to implement the eligibility modification. Employers of employees not identified at 5 U.S.C. 8901(1)(A) may request a waiver. Tribal employers may notify the Director in writing if they choose not to apply this eligibility modification.

U.S. OFFICE OF PERSONNEL MANAGEMENT
NOTICE AND POSTING SYSTEM

Notice No: 2014 23

Washington, DC 20415

Date: October 17, 2014

Notice of OPM Regulatory Change

AGENCIES: POST THIS NOTICE IN A PROMINENT PLACE. The attached regulations must be made available for employees to review in accordance with 5 U.S.C. 1103(b)(2)(A) and 5 CFR Part 110. Insert the location where the regulations can be reviewed in the box below. This notice should be posted for a minimum of 10 workdays.

EMPLOYEES: The OPM regulations summarized in this Notice were recently published in the Federal Register. The complete text of the regulations, including relevant dates and addresses, is available for review in the location listed below. This Notice is for informational purposes only. Publication in the Federal Register provides official notice to the public of OPM regulatory changes.

REGULATION STAGE:

Proposed

Interim

Final

SUBJECT: FEHB Expansion of Eligibility to Certain Employees on Temporary Appointments and Seasonal and Intermittent Schedules

SUMMARY:

The United States Office of Personnel Management (OPM) is issuing a final rule to expand eligibility for enrollment under the Federal Employees Health Benefits (FEHB) Program to certain temporary, seasonal, and intermittent employees who are identified as full-time employees. This final rulemaking follows a notice of proposed rulemaking published July 29, 2014. This regulation allows newly eligible Federal employees to enroll no later than January 2015.

LOCATION OF COMPLETE TEXT: <http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24652.pdf>

Attachment



Katherine Archuleta, Director

Inquiries:

Policy and Planning Analysis, Office of Personnel Management,
(202) 606-0004; FAX to (202) 606-0636.

Rules and Regulations

Federal Register

Vol. 79, No. 201

Friday, October 17, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AM86

Federal Employees Health Benefits Program Modification of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to modify eligibility for enrollment under the Federal Employees Health Benefits (FEHB) Program to certain temporary, seasonal, and intermittent employees who are identified as full-time employees. This final rule follows a notice of proposed rulemaking published July 29, 2014. This regulation will allow newly eligible Federal employees to enroll no later than January 2015.

DATES: This final rule is effective November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel, Senior Policy Analyst at (202) 606-0004.

SUPPLEMENTARY INFORMATION: OPM is modifying eligibility for coverage under the Federal Employees Health Benefits (FEHB) Program to certain temporary, seasonal, and intermittent Federal employees who are expected to work a full-time schedule, which is generally based on the definition of full-time employee under section 4980H of the Internal Revenue Code (IRC), for at least 90 days.

Pursuant to 5 U.S.C. 8913(b), OPM has broad authority to prescribe the conditions under which employees are eligible to enroll in the FEHB program

and is empowered to include or exclude employees on the basis of the nature and type of their employment or conditions pertaining to their appointments, including the duration of the appointment. OPM proposed this modification in a notice of proposed rulemaking on July 29, 2014. The proposed rule had a 30 day comment period during which OPM received 100 comments.

Responses to Comments on the Proposed Rule

OPM received comments from individual members of the public, Federal employees, Federal agencies, Federal shared service providers, tribal organizations, and public employee unions. The majority of the comments were positive. Many members of the public, Federal employees, and their families expressed appreciation for the coverage changes. This rule would create a more even playing field for similarly situated employees.

Some Federal agencies expressed concern about the effect on the budget of this coverage change, stating they may revisit their staffing models (such as hiring a different mix of temporary, seasonal, and intermittent staff) to accommodate the rule change. OPM recognizes that agencies will have to budget for FEHB government contributions for those newly eligible employees who elect to participate. OPM also recognizes that agencies may reconsider staffing arrangements in light of this rule change. OPM continues to believe that this coverage change is consistent with the Federal government's role as a model employer.

One commenter suggested that newly eligible temporary, seasonal, and intermittent employees receive a lower government contribution than is available to currently eligible employees. OPM understands that such a change would lessen the regulation's impact on agency budgets. However, OPM's goal is to make affordable health insurance more widely available to full-time employees and therefore declines to lower the government contribution.

Several commenters raised concerns that employing agencies may limit appointments to fewer than 90 days or limit work hours to fewer than 130 hours in a month to avoid providing health insurance to temporary, seasonal, and intermittent employees. OPM believes employing agencies will use

available staffing authorities to meet the needs of their workload, rather than changing staffing models in light of this rule.

One commenter was concerned that certain agencies with large seasonal workforces will be affected more than others that do not use seasonal hiring authorities. OPM recognizes that this is true, but continues to believe that this coverage change is consistent with the Federal government's role as a model employer.

One commenter was concerned that the money saved by increasing retirement contributions of new permanent staff will be spent on new benefits for temporary employees. The changes in retirement benefits is independent of this rulemaking, which OPM believes is the best way to align access to health benefits across different classes of workers.

Two commenters raised concerns about whether seasonal Federal employees could afford FEHB premiums. It is important to note that these newly eligible employees will receive the same government contribution as currently eligible Federal employees. OPM believes that the government contribution to FEHB is sufficient.

OPM received numerous questions from Federal entities, including agencies and shared service providers, about implementation of the proposed rule. These question topics included timing, necessary system changes, division of responsibilities between the agency and shared service provider, and identification of newly eligible employees. These matters are important for implementation, but are outside the scope of this regulation and will be handled in forthcoming OPM guidance.

A commenter asked if those temporary, seasonal, and intermittent employees who separate from service would be eligible for the 31-day continuation of coverage that is available to other FEHB enrollees when eligibility terminates. The answer is yes: the 31-day continuation of coverage will be available to the enrollee on the same terms as it is for other FEHB enrollees.

One commenter asked if FEHB coverage under this proposal would qualify toward the 5-year continuous coverage requirement prior to retirement. FEHB coverage for these newly eligible employees will count

toward the requirement that Federal retirees maintain FEHB coverage for 5 years before retirement in order to continue FEHB enrollment into retirement. Note that employees carrying FEHB into retirement must also be eligible to participate in a qualifying retirement plan. This FEHB rule does not change any employee's eligibility to participate in a qualifying retirement program.

Two commenters asked about the IRC section 6056 requirements for large employers to report on availability of health insurance to full-time employees. Those requirements fall outside the scope of this rule. OPM plans to issue guidance to Federal agencies and payroll providers on IRC section 6056 reporting in a separate communication.

One commenter asked about whether this modification would apply to students and interns working for Federal agencies. Consistent with current policy, a paid student or intern who meets the criteria for coverage will be eligible to enroll in an FEHB plan. One commenter asked about whether Special Assistant United States Attorneys (SAUSAs) would be included. To the extent that a SAUSA works in a pay status meeting the criteria for coverage, the SAUSA will be eligible to enroll in an FEHB plan.

Suggestions To Amend the Proposed Rule

OPM received nearly identical comments from several tribal organizations expressing concern with the proposed language at § 890.301(k) that would allow certain non-Federal government entities to request a waiver from the changes in this rule. The proposed rule language stated that such a waiver would be granted at the sole discretion of the OPM Director if the non-Federal employer demonstrates that the modification would interfere with the employer's self-governance. These comments requested that waivers should be automatic and without pre-conditions for Tribal employers. OPM recognizes that Tribal governments are sovereign and that tribes have the best understanding of their governmental, employment, and financial needs. OPM has taken that into account in this final rule-making with respect to the change in coverage and has modified § 890.301(k) regarding tribal employers.

Several tribal organizations also requested that OPM clarify the application of the common law employee standard to tribal employers. This common law employee standard is used to determine which employees of tribal employers may be eligible to enroll in FEHB. The proposed rule was

limited to a modification of FEHB eligibility for certain temporary, seasonal, and intermittent employees and thus this clarification is outside the scope of this rule.

One commenter raised a concern regarding employees who work 15 or fewer hours per week because they can receive a full Government contribution to FEHB rather than the pro-rated share available to those working from 16 to 32 hours per week. This is governed by definitions in the Federal Employee's Part-Time Career Employment Act, which is outside the scope of this rule.

Several commenters pointed out that the definition of a full-time employee in IRC section 4980H is different from the definition in the Federal Employee's Part-Time Career Employment Act of 1978. OPM is aware of these differing statutory definitions of part-time and full-time, but it is outside the scope of this regulation to change these definitions.

Several commenters asked whether FEHB government contributions would be pro-rated for these newly eligible employees working between 16 and 32 hours per week, as they are for permanent employees. The Federal Employee's Part-Time Career Employment Act excludes temporary and intermittent employees from the definition of "part-time employment." As such, agencies are not authorized to pro-rate government contributions for newly eligible temporary or intermittent employees.

One commenter suggested that the 130 hour per calendar month full-time standard be converted to a biweekly pay period standard, since many Federal agencies use a bi-weekly pay period rather than a month for purposes of pay and timekeeping. OPM assumes that agencies will continue to use their current methods of pay period-based timekeeping. The 130 hour per month standard in OPM's proposed rule is generally consistent with definitions and methodology outlined in IRS rulemaking under IRC section 4980H.¹ Agencies will be responsible for implementing this rule as appropriate for their systems and therefore OPM believes a regulatory change is not necessary.

Several commenters suggested that OPM should extend other Federal employee health benefits that do not have a government contribution, such as

¹Note that under IRC section 4980H final regulations, a different hour of service monthly equivalency will apply for an employer using the weekly rule available under the monthly measurement method to determine full-time employee status. See 26 CFR 54.4980H-1(a)(21)(iii) and 54.4980H-3(c)(3).

dental and vision insurance, long-term care insurance, and health care flexible spending accounts to temporary, seasonal, and intermittent Federal employees. These suggestions are outside the scope of this rule.

One commenter proposed a different organizational structure for the regulations. OPM believes our original construction is satisfactory and declines to make the suggested change.

One commenter suggested that OPM clarify that FEHB coverage will begin on the first day of employment for these newly eligible employees. For most new employees, coverage is effective on the first day of the first pay period after the employee submits enrollment paperwork. This will be the same for new employees included in this coverage modification. For those who are currently employed as a temporary, seasonal, or intermittent employee, this rule becoming effective will serve as a qualifying life event (QLE) and coverage will become effective according to the existing rules for QLEs.

Several commenters expressed concern that the projected January 2015 implementation date does not allow sufficient time for the system changes to capture, track, and monitor the data necessary for this change. Some suggested a more delayed implementation schedule. OPM recognizes the challenges in implementation and is committed to work with agencies and payroll providers on implementation challenges. The rule is intended to be effective no later than January 2015.

Changes From Proposed Rule

OPM has made several changes to this final rule. The proposed rule used a modified version of the term "regularly scheduled administrative workweek," which already has a different meaning in other parts of title 5, Code of Federal Regulations. As such, this final regulation eliminates that term and instead refers to "the total hours in pay status (including overtime hours) plus qualifying leave without pay hours." This new language should avoid confusion with existing regulatory terms.

This final rule clarifies in § 890.102(j)(3) that an employee enrolled under 890.103(j) will be eligible to remain enrolled in FEHB unless the employee exceeds 365 days in nonpay status. This clarification aligns enrollment rules for this newly eligible population with rules for existing FEHB enrollees.

One commenter stated that proposed § 890.102(j)(1)(ii) is confusing. The proposed provision read "If the

employing office expects the employee to work for fewer than 90 days, the employee will be eligible to enroll after the completion of a 90 day waiting period.” Accordingly, OPM has amended it to state “If the employing office expects the employee to work for fewer than 90 days and the employee actually works for fewer than 90 days, the employee will generally be ineligible to enroll in FEHB because the employee will not be employed at the end of the waiting period applicable to these employees. However, if the expectation changes and the employee is expected to work for 90 days or more, that individual is eligible to enroll upon notification by the employing office, but enrollment (including the effective date of coverage) must be no later than the end of the waiting period ending on the 91st day after the first day of employment.”

OPM received several comments suggesting changes to how this modification would affect non-career United States Postal Service (USPS) employees. OPM understands that the USPS currently offers affordable employer provided health benefits coverage, separate and apart from FEHB for a majority of its full-time non-career employees, and is working toward implementing this coverage for the rest of these employees. OPM further understands that the category of USPS employees referred to as full-time non-career employees generally corresponds to the category of employees affected by the modification of FEHB eligibility under this final rule. Because the terms and conditions of employment for the class of employees that is affected by this rule already includes, or is anticipated to soon include, an offer of affordable employer provided health benefits coverage, OPM has exempted USPS employees from this final rule.

OPM received a comment that use of the phrase “employer’s need for self-governance” as a justification for waiver of paragraph (j) was confusing. OPM has changed this phrase to “employer’s need to manage its workforce.”

Provisions of the Final Rule

This final rule modifies eligibility by authorizing enrollment in a FEHB health plan for certain non-Postal Federal employees on temporary appointments and certain non-Postal employees working on seasonal and intermittent schedules. Currently, most employees on temporary appointments become eligible for FEHB coverage after completing 1 year of current continuous employment and, once eligible for coverage, do not receive an employer contribution to premium. Employees

working on seasonal schedules for less than 6 months in a year and those working intermittent schedules are excluded from eligibility regardless of the work hours for which they are expected to be scheduled. Some limited exceptions were made to these exclusions for temporary firefighters and emergency response workers in 5 CFR 890.102(h) and (i).

Under this final regulation, non-Postal employees on temporary appointments, non-Postal employees on seasonal schedules who will be working less than six months per year, and non-Postal employees working intermittent schedules will be eligible to enroll in a FEHB health plan if the employee is expected to work a full-time schedule of 130 or more hours in a calendar month. If the employing office expects the employee to work at least 90 days, the employee is eligible to enroll upon notification of the employee’s eligibility by the employing office. If the employing office expects the employee to work fewer than 90 days, that individual is considered to be in a 90 day waiting period and is generally ineligible to enroll (because the individual will not be employed at the end of the waiting period). If the expectation changes to at least 90 days, the employee will be eligible to enroll upon notification from the employing office, but no later than the 91st day of employment. Temporary, seasonal, and intermittent employees who are expected to work a schedule of less than 130 hours in a calendar month will not be eligible to enroll in a FEHB health plan. Temporary, seasonal, and intermittent employees for whom the expectation of hours of employment changes from less than 130 hours per calendar month to 130 hours or more per calendar month would become eligible to enroll in an FEHB health plan upon notification from the employing office.

This final rule allows newly eligible employees (employees on an appointment limited to 1 year and employees working on a seasonal or intermittent schedule) to initially enroll under the FEHB program with a Government contribution to premium if they are expected to be employed on a full-time schedule and are expected to work for at least 90 days. Those expected to work fewer than 90 days will be considered in a 90 day waiting period and therefore ineligible to enroll (because the individual will not be employed at the end of the waiting period), unless that expectation changes during the 90 days.

Some temporary employees who have completed 1 year of continuous

employment are already eligible for FEHB coverage but without a Government contribution to premium. This final rule allows these employees to enroll in a FEHB plan under 5 CFR 890.102(j) (with a Government contribution to premium) if the employee is determined by his or her employing office to be newly eligible for FEHB coverage under this regulation.

Enrollments for employees newly eligible pursuant to this rule will be accepted during a 60-day period after the employing office notifies employees of their eligibility to enroll in a FEHB health plan. Coverage will become effective as provided for by 5 CFR 890.301. Employing offices must promptly determine eligibility of new and current employees and upon determining eligibility, promptly offer employees an opportunity to enroll in the FEHB Program so that coverage becomes effective no later than January 2015.

While this final regulation modifies FEHB coverage for certain categories of Federal employees, there are other employers who are entitled to purchase FEHB coverage for their own employees or whose employees are otherwise entitled to enroll in FEHB coverage. These other employers may have made or are planning to make other arrangements to provide health insurance for their temporary, seasonal, and intermittent employees. Accordingly, the OPM Director may waive application of this final rule when the employer of an individual not covered by 5 U.S.C. 8901(1)(A) demonstrates to OPM that this rule’s requirements would have an adverse impact on the employer’s ability to effectively manage its workforce. We expect such instances to be rare. Tribal employers participating in FEHB may waive application of this final rule simply by notifying OPM.

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 adds to the list of groups eligible to enroll under the FEHB Program.

Executive Orders 13563 and 12866, Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011).

Baseline FEHB Eligibility and Federal Government Employer Shared Responsibility

This final rule would modify eligibility to enroll in a FEHB plan to certain temporary, seasonal, and intermittent employees who are identified as working full-time. In order to estimate rule-induced impacts, it is necessary to assess the number of full-time Federal employees who are not currently eligible to participate in the FEHB program or are not currently eligible to have the government pay a portion of their premium, and thus may be affected by the final rule.

The following categories of Federal employees are either excluded by regulation from participating in the FEHB Program or are not currently eligible to have the government pay a portion of their premium:

- *Temporary employees with less than a year of service.* Per OPM regulations, most of these individuals are not eligible to enroll in FEHB. In 2012 OPM published a regulation extending FEHB eligibility to certain temporary firefighters and some personnel performing emergency response functions.
- *Seasonal employees.* Seasonal employees working six months or fewer are generally prohibited by regulation from enrolling in FEHB.
- *Intermittent employees.* Intermittent employees are generally prohibited by regulation from enrolling in FEHB. In 2012, however, OPM published a regulation extending FEHB eligibility to certain intermittent employees engaged in emergency response and recovery work.
- *Temporary employees with more than a year of service.* Per statute, these employees can enroll in an FEHB plan if they pay the entire premium with no Government contribution.

OPM has worked with Federal payroll providers to assess how many full-time non-Postal Federal employees are without access to FEHB. The data show that all responding executive agencies have a small number of full-time employees (as defined in Section 4980H of the IRC) without access to FEHB. The number without access varies from agency to agency. Within agencies, the number varies from month to month. Some large departments hire full-time temporary or seasonal employees only for a few months of the year.

The agencies included in our data, in aggregate, offer FEHB to at least 95 percent of full-time employees (as defined in IRC section 4980H) (and their dependents) for all months. Across civilian, non-Postal, executive agencies

and all months of the year, our data indicate that there are 300,000 full-time (as defined in IRC section 4980H) employee-months currently ineligible for FEHB (0.9 to 2 percent of the Federal workforce).

The Federal government and its agencies are subject to employer shared responsibility under IRC section 4980H like other applicable large employers. The employer shared responsibility payments only apply if a full-time employee (generally defined as an employee with 130 hours of service in a month) receives a premium tax credit in connection with the purchase of health insurance through an Exchange. We do not know whether the Federal full-time employees not yet eligible for FEHB would, in the absence of this rule, be eligible for premium tax credits in connection with coverage purchased on an Exchange because we lack information on other available sources of health coverage or household income. Even in the extremely unlikely case that all 300,000 full-time employee-months without FEHB did receive a premium tax credit in connection with coverage purchased on an Exchange, the total assessable payment incurred by the Federal agencies would be well below the threshold, set by Executive Order 12866, for economic significance, which is \$100 million.²

Impacts of the Final Rule

Agencies may incur additional FEHB costs; a rough quantification of these potential costs appears below.

We do not know how many individuals without an offer of FEHB, which varies widely from month to month, would enroll in FEHB if it were available. Our similar recent regulations changing FEHB coverage to certain temporary firefighters and disaster recovery workers resulted in very limited take-up, ranging from approximately 10 to 20 percent. We estimate, using enrollment-weighted averages, that FEHB coverage currently costs the government about \$700 per full-time worker per month for affected agencies.³ Given this average cost estimate, if those currently without FEHB eligibility become eligible and the portion of newly eligible employees who enroll is between 10 and 20 percent, this modification would generate costs to the Federal

² The relevant employer payment would be \$250 per month (or \$3,000 per year), as indexed, only for those full-time employees who receive a premium tax credit in connection with coverage purchased on an Exchange.

³ This estimate includes FEHB premium payments but not administrative costs to employing agencies. We lack data to quantify the latter.

government of well below the threshold for economic significance, which is \$100 million.

The premium payments newly made by the Federal government are appropriately categorized as costs to society if rule-induced increases in FEHB enrollment would be associated with providing additional medical services to newly-enrolled individuals. To the extent that increases in enrollment do not change how society uses its resources, then premium payments by the government would instead be transfers between members of society. Recipients of these transfers could include newly-enrolled individuals, if they would have paid (or paid more) for medical services or for health insurance premiums in the absence of the rule, or providers and charities, if the effect of the rule is a decrease in uncompensated care.

We lack exact data to quantify rule-induced public health benefits or to refine our estimates of costs and transfers.

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 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Katherine Archuleta,
Director.

For the reasons set forth in the preamble, OPM is amending title 5, chapter I, 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; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 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; Sec. 890.102 also issued under sections 11202(f),

11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. Section 890.102 is amended by adding paragraphs (j) and (k) to read as follows:

§ 890.102 Coverage.

* * * * *

(j)(1) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, a non-Postal employee working on a temporary appointment, a non-Postal employee working on a seasonal schedule of less than 6 months in a year, or a non-Postal employee working on an intermittent schedule, for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, is eligible to enroll in a health benefits plan under this part as follows:

(i) If the employing office expects the employee to work at least 90 days, the employee is eligible to enroll upon notification of the employee's eligibility by the employing office, and

(ii) If the employing office expects the employee to work for fewer than 90 days and the employee actually works for fewer than 90 days, the employee will generally be ineligible to enroll in FEHB because the employee will not be employed at the end of the waiting period applicable to these employees. However, if the expectation changes and the employee is expected to work for 90 days or more, that individual is eligible to enroll upon notification by the employing office, but enrollment (including the effective date of coverage) must be no later than the end of the waiting period ending the 91st day after the first day of employment.

(2) An employee working on a temporary appointment, an employee working on a seasonal schedule of less than 6 months in a year, or an employee working on an intermittent schedule for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be less than 130 hours per calendar month is generally ineligible to enroll in a health benefits plan under this part. If the expectation of hours of employment changes to 130 hours or more per month for a non-Postal employee, that employee is eligible to enroll in a health benefits plan under this part as described in paragraph (j)(1)(i) of this section.

(3) Once an employee is enrolled under this paragraph (j), eligibility will not be revoked, regardless of his or her actual work schedule or employer expectations in subsequent years, unless the employee separates from Federal

service, receives a new appointment (in which case eligibility will be determined by the rules applicable to the new appointment), or exceeds 365 days in nonpay status in accordance with § 890.303(e) (subject to extension, if applicable, for qualifying leave without pay as defined at paragraph (j)(4) of this section).

(4) For purposes of this paragraph (j), “qualifying leave without pay hours” means hours of leave without pay for purposes of taking leave under the Family and Medical Leave Act, for performance of duty in the uniformed services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 et seq., for receiving medical treatment under Executive Order 5396 (Jul. 7 1930), and for periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81.

(5) Each temporary employee who is initially eligible for FEHB coverage on the basis of this paragraph (j) is entitled to enroll in accordance with § 890.301(a). A temporary employee who is currently eligible under 5 U.S.C. 8906a (with no Government contribution) but who is not enrolled on November 17, 2014, and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to enroll (with a Government contribution) on the basis of paragraph (j) in accordance with § 890.301(h)(4)(ii). A temporary employee who is enrolled under 5 U.S.C. 8906a (with no Government contribution) on November 17, 2014, and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to change enrollment (with a Government contribution) on the basis of paragraph (j) in accordance with § 890.301(h)(4)(ii).

(k) The Director, upon written request of an employer of employees other than those covered by 5 U.S.C. 8901(1)(A), may, in his or her sole discretion, waive application of paragraph (j) of this section to its employees when the employer demonstrates to the Director that the waiver is necessary to avoid an adverse impact on the employer's need to manage its workforce. However, a Tribal employer participating under 25 U.S.C. 1647b may provide a written notification to the Director that it has chosen not to apply paragraph (j) of this section for its workforce.

■ 3. Amend § 890.301 as follows:

■ a. Revise the heading of paragraph (h).b. Redesignate paragraph (h)(4) as paragraph (h)(4)(i).

■ c. Add paragraph (h)(4)(ii).

The revision and addition read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(h) *Change in employment status or entitlement to Government contribution.*

* * *

(4) * * *

(ii) A change in entitlement to Government contribution as a result of becoming eligible for coverage under § 890.102(j).

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2013–0053]

RIN 3150–AJ18

Definition of a Utilization Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to add SHINE Medical Technologies, Inc.'s (SHINE) proposed accelerator-driven subcritical operating assemblies to the NRC's definition of a “utilization facility.” In 2013, SHINE submitted a two-part construction permit application for a medical radioisotope production facility that SHINE proposes to build in Janesville, Wisconsin. The proposed accelerator-driven subcritical operating assemblies, to be housed in SHINE's irradiation facility, would be used to produce molybdenum-99 (Mo-99), a radioisotope used in medical imaging and other radioisotopes used for medical purposes. This rule allows NRC staff to conduct an efficient and effective licensing review of the SHINE construction permit application and any subsequent operating license application.

DATES: This final rule is effective December 31, 2014, unless a significant adverse comment is received by November 17, 2014. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able