

(2) The employee is separated or placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

(g) The dollar value of compensatory time off when it is liquidated is the amount of overtime pay the employee otherwise would have received for hours of the pay period during which compensatory time off was earned by performing overtime work.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206-AK99

Federal Long Term Care Insurance Program: Miscellaneous Changes, Corrections, and Clarifications

AGENCY: Office of Personnel
Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to make miscellaneous changes, corrections, and clarifications to the Federal Long Term Care Insurance Program (FLTCIP) regulations.

DATES: *Effective Date:* April 16, 2007.

FOR FURTHER INFORMATION CONTACT: Edward M. DeHarde, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or call him at 202-606-0004.

SUPPLEMENTARY INFORMATION: The current FLTCIP regulations were published in the **Federal Register** at 70 FR 30605, May 27, 2005. In those regulations OPM replaced references to "Federal civilian and Postal employees and members of the uniformed services" with "active workforce member" in several places. We are making a similar change in two additional places: § 875.405 and § 875.410. We are also correcting a section reference in § 875.209 of the previously published regulations.

In addition, § 875.408 of the FLTCIP regulations discusses incontestability, a provision that allows coverage based on an erroneous application to continue under certain circumstances. The FLTCIP contractor often doesn't learn that coverage is based on an erroneous application until someone files a claim,

and the contractor becomes aware that the information on the individual's application differed from what is shown in the individual's medical records. If the erroneous coverage has been in effect less than two years, or if the application contained knowingly false or misleading information, the contractor may rescind (void) the coverage and refund the individual's premiums. Section 875.104 of the FLTCIP regulations contains procedures for resolving disputes concerning eligibility for benefits and payment of claims. These final regulations clarify that the claims dispute procedures apply only to persons who have valid coverage under the Program. They do not apply to individuals whose erroneous coverage is rescinded.

A proposed rule was published to amend 5 CFR part 875 in the **Federal Register** at 71 FR 19459, April 14, 2006. OPM requested comments by June 13, 2006. We received one comment by that date, from an FLTCIP enrollee. The issues raised by this commenter are discussed below.

The commenter did not address the miscellaneous changes, corrections, and clarifications that were contained in the proposed regulation. Instead, the commenter suggested that OPM should specifically list in the regulations which injuries qualify for coverage under FLTCIP to ensure that enrollees with similar injuries receive similar coverage. The comment received is beyond the scope of the proposed change to FLTCIP regulations. In addition, coverage under FLTCIP is not based on an enrollee's injury or medical diagnosis; it is based on an enrollee's established inability to perform defined activities of daily living or an enrollee's severe cognitive impairment. Therefore, for the reasons supplied in the proposed rule, the proposed rule amending 5 CFR part 875 which was published in the **Federal Register** at 71 FR 19459, April 14, 2006, is adopted as a final rule without change.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only enrollees in the Federal Long Term Care Insurance Program.

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Employee benefit plans, Government contracts, Government employees, Health insurance, Military personnel, Retirement.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 5 CFR part 875, as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: Authority: 5 U.S.C. 9008.

■ 2. In § 875.104 add paragraph (f) to read as follows:

§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?

* * * * *

(f) The procedures described in paragraphs (a), (b), (c), (d), and (e) of this section apply only if you have valid coverage under the FLTCIP. If the Carrier determines that your coverage was based on an erroneous application and voids the coverage as described in § 875.408 of this part, these provisions do not apply. The Carrier will provide you with information on your review rights in its rescission letter (letter voiding your coverage).

■ 3. In § 875.209 revise the last sentence of paragraph (b) to read as follows:

§ 875.209 How do I demonstrate that I am eligible to apply for coverage?

* * * * *

(b) * * * The incontestability provisions in § 875.408 do not apply to this section.

■ 4. In § 875.405 revise the first sentence of paragraph (a)(1) to read as follows:

§ 875.405 If I marry, may my new spouse apply for coverage?

(a)(1) If you are an active workforce member and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage and will be subject to the underwriting requirements in force for the spouses of active workforce members during the most recent open season. * * *

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■ 5. In § 875.408 revise paragraph (a) to read as follows:

§ 875.408 What is the significance of incontestability?

(a) Incontestability means coverage issued based on an erroneous application may remain in effect. Such coverage will not remain in effect under any of the following conditions:

(1) If your coverage has been in force for less than 6 months, the Carrier may void your coverage upon a showing that information on your signed application that was material to your approval for coverage is different from what is shown in your medical records.

(2) If your coverage has been in force for at least 6 months but less than 2 years, the Carrier may void your coverage upon a showing that information on your signed application that was material to your approval for coverage is different from what is shown in your medical records and pertains to the condition for which benefits are sought.

(3) After your coverage has been in effect for 2 years, the Carrier may void your coverage only upon a showing that you knowingly and intentionally made a false or misleading statement or omitted information in your signed application for coverage regarding your health status that was material to your approval for coverage.

(4) If your coverage is voided, as described in paragraph (a)(1), (a)(2), or (a)(3) of this section, no claims will be paid. In addition, the provisions of § 875.104 relating to the procedures for resolving a dispute involving benefits eligibility or claims denials do not apply to your situation. You may request a review by the Carrier if you believe that your coverage was voided in error. You must submit your request in writing to the Carrier within 30 days of the date of the rescission letter (letter voiding your coverage).

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■ 6. In § 875.410 revise the first sentence to read as follows:

§ 875.410 May I continue my coverage when I leave Federal or military service?

If you are an active workforce member, your coverage will automatically continue when you leave active service, as long as the Carrier continues to receive the required premium when due. * * *

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. AMS-FV-06-0190; FV07-916/917-2 FIR]

Nectarines and Peaches Grown in California; Temporary Suspension of Provisions Regarding Continuance Referenda Under the Nectarine and Peach Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule temporarily suspending order provisions that require continuance referenda to be conducted for the nectarine and peach marketing orders during winter 2006-07. This rule enables USDA to postpone conducting the continuance referenda until the industry has had sufficient time to evaluate the effects of recent amendments to the marketing orders. Temporary suspension of the continuance referenda should also minimize confusion during the current committee nomination period, which overlaps with the scheduled referenda period.

DATES: *Effective Date:* April 16, 2007.

FOR FURTHER INFORMATION CONTACT:

Laurel May, 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:* Laurel.May@usda.gov; or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; *Telephone:* (559) 487-5901, *Fax:* (559) 487-5906, or *E-mail:* Kurt.Kimmel@usda.gov. The rule can be viewed at <http://www.regulations.gov>.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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:* Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos.

916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 date of the entry of the ruling.

This rule continues in effect the action that temporarily suspends the provisions in §§ 916.64(e) and 917.61(e) of the orders, which specify when continuance referenda should be conducted to determine whether growers favor continuance of the orders. Temporary suspension of the provisions for continuance referenda will provide growers with more time to evaluate the effects of recent amendments to the orders before voting on continuance of the marketing programs. Suspension of the referenda requirements will also diminish the confusion likely to occur if the referenda are held during current committee nominations. These actions were unanimously recommended by the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees) at their August 31, 2006, meetings.

Nectarines

Section 916.64(e) of the nectarine marketing order currently provides that USDA shall conduct a continuance