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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206-AK98

FEHB Coverage and Premiums for Active Duty Members of the Military

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final regulation to change the Federal Employee Health Benefits (FEHB) Program regulations that govern continued coverage for employees who are called or ordered to serve in the uniformed services. These final regulations provide extended FEHB coverage for up to 24 months to Federal employees called or ordered to active duty and who meet certain requirements, including serving in support of a contingency operation. Those employees who are called or ordered to active duty in support of a contingency operation are also eligible for premium payments by their employing agency. The purpose of these final regulations is to authorize Federal agencies to continue health benefits coverage for up to 24 months for those employees called or ordered to active duty, with certain employees qualifying for agency premium contributions.

EFFECTIVE DATE: The effective date of this final regulation is April 16, 2007.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy, OPM, Room 3425, 1900 E Street NW., Washington, DC 20415-0001. Phone number: 202-606-0004. E-mail: mwkaszy@opm.gov.

SUPPLEMENTARY INFORMATION: The National Defense Authorization Act for 2005 (Pub. L. 108-375 section 1101) amended FEHB law to provide up to 24 months of continued FEHB coverage for

Federal employees who are called or ordered to active duty in support of a contingency operation (5 U.S.C. 8905a), and to authorize agencies to pay the employee's share and the Government's share of premiums for up to 24 months (5 U.S.C. 8906(e)(3)). The Act provides that this enhanced benefit is available for any employee who:

(1) Is enrolled in the FEHB Program;
(2) Is a member of a reserve component of the armed forces;
(3) Is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10 U.S.C.);

(4) Is placed on leave without pay or separated from service to perform active duty; and

(5) Serves on active duty for more than 30 consecutive days.

The expanded authority for agency premium payments authorized by Public Law 108-375 is a valuable benefit that helps reservists and their families shoulder the cost of health care during a time when they need it most. Public Law 108-454, the Veterans' Benefits Improvement Act of 2004, was enacted December 10, 2004. Section 201 of Public Law 108-454 amended 38 U.S.C. 4317(a)(1)(A) to extend from 18 to 24 months the length of an employee's health insurance coverage when the employee is absent because of service in the uniformed services. For FEHB purposes, this law applies to employees who are called to active duty but do not meet all the requirements of Public Law 108-375. Generally, these employees have orders that do not show that they are called to active duty in support of a contingency operation. As before, they do not meet the requirements of FEHB law for agency premium payment during active duty. This final regulation's purpose is to place into rulemaking the requirements of Public Law 108-375 and Public Law 108-454.

On June 20, 2006, the Office of Personnel Management (OPM) published a proposed regulation in the **Federal Register** at 71 FR 35397. OPM received comments from a Federal agency and an employee union in response to the proposed regulation. The Federal agency pointed out that 5 U.S.C. 8905a now allows the 24 months of continued coverage to begin on the date that the employee is placed on leave without pay or separated from

service to perform active duty in the uniformed services. We agree that the law now further defines when the 24 months of continued coverage begins so we have made an appropriate revision to the regulation. The agency also asked that we clarify section 890.502(f)(2) of the regulation to show that agency payment of the Government and employee contributions and any additional administrative expenses is only authorized while the employee is on orders to serve in a contingency operation and that these contributions will cease when the employee is no longer serving in support of a contingency operation. We have revised the regulation to make this clarification. A comment made by an employee union states that the regulation should authorize eligibility for continued, fully subsidized FEHB coverage for the entire length of a Federal employee's deployment in the uniformed services. While we would like to offer as much support as possible to those in the uniformed services, the laws upon which our regulation is based only authorize us to offer employees up to 24 months of subsidized coverage, at the agency's discretion, while serving in support of a contingency operation in the uniformed services. As a matter of law, the benefits provided for in our regulation cannot exceed those authorized by legislation (Pub. L. 108-375 and 108-454).

Regulatory Flexibility Act

I certify that this final regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This regulation 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 professionals, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Linda M. Springer,
Director.

■ For the reasons set forth in the preamble, OPM is amending 5 CFR part 890 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 section 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 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, unless otherwise noted.

■ 2. Section 890.303 paragraph (i) is revised to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(i) Service in the uniformed services.
(1) The enrollment of an individual who separates, enters military furlough, or is placed in nonpay status to serve in the uniformed services under conditions that entitle him or her to benefits under part 353 of this chapter, or similar authority, may continue for the 24-month period beginning on the date that the employee is placed on leave without pay or separated from service to perform active duty in the uniformed services, provided that the individual continues to be entitled to benefits under part 353 of this chapter, or similar authority. As provided for by 5 U.S.C. 8905(a), the continuation of enrollment for up to 24 months applies to employees called or ordered to active duty in support of a contingency operation on or after September 14, 2001. The enrollment of an employee who met the requirements of chapter 43 of title 38, United States Code, on or after December 10, 2004, may continue for the 24-month period beginning on the date that the employee is placed on leave without pay or separated from service to perform active duty in the uniformed services, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority.

(2) An employee in nonpay status is entitled to continued coverage under paragraph (e) of this section if the employee's entitlement to benefits under part 353 of this chapter, or similar authority, ends before the expiration of 365 days in nonpay status.

(3) If the enrollment of an employee had terminated due to the expiration of 365 days in nonpay status or because of

the employee's separation from service, it may be reinstated for the remainder of the 24-month period beginning on the date that the employee is placed on leave without pay or separated from service to perform active duty in the uniformed services, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority.

■ 3. Section 890.304 paragraphs (a)(1)(vii) and (a)(1)(viii) are revised to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(vii) For an employee who separates to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, for the purpose of performing duty not limited to 30 days or less, the date that is 24 months after the date that the employee is placed on leave without pay or separated from service to perform active duty in the uniformed services, or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, unless the enrollment is terminated under paragraph (a)(1)(vi) of this section.

(viii) For an employee who is furloughed or placed on leave of absence under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, the date that is 24 months after the date that the employee is placed on leave without pay or separated from service to perform active duty to serve in the uniformed services, or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v) of this section.

* * * * *

■ 4. Section 890.502 paragraph (f) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(f) Uniformed services. (1) Except as provided in paragraph (f)(2) of this section, an employee whose coverage continues under § 890.303(i) is responsible for payment of the employee share of the cost of enrollment for every pay period for which the enrollment continues for the first 365 days of continued coverage as set forth under paragraph (b) of this section. For coverage that continues after 365 days in nonpay status, the employee must pay, on a current basis, the full

subscription charge, including both the employee and Government shares, plus an additional 2 percent of the full subscription charge.

(2) As provided by 5 U.S.C. 8906(e)(3), an employing agency may pay both the Government and employee contributions and any additional administrative expenses for the cost of coverage for the employee and the employee's family for a period of 24 months for employees called or ordered to active duty in support of a contingency operation on or after September 14, 2001. The payment of Government and employee contributions and any additional administrative expenses authorized by this section only applies to employees while they are serving in support of a contingency operation, and eligibility for these payments terminates when the employee ceases to be on orders for a contingency operation. Payment of these contributions and expenses is solely at the discretion of the employing agency.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 121 and 135

[Docket No. FAA-2002-6717; Amendment Nos. 1-55, 121-329, 135-108]

RIN 2120-AI03

Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration is correcting a final rule published in the **Federal Register** on January 16, 2007 (72 FR 1808). That final rule applied to air carrier (part 121), commuter, and on-demand (part 135) turbine powered multi-engine airplanes used in passenger-carrying, and some all-cargo, extended-range operations. This amendment corrects the rule language applicable to dual maintenance and formatting of a Part 1 definition and section of Appendix G. None of these changes is substantive, but will clarify the FAA's intent of the final rule for the public.

DATES: These amendments become effective February 15, 2007.

FOR FURTHER INFORMATION CONTACT: For technical information on operational issues, contact Robert Reich, Flight