

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AG44

### Prevailing Rate Systems; Abolishment of Cook, IL, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel  
Management.

ACTION: Interim rule with request for  
comments.

**SUMMARY:** The Office of Personnel Management is issuing interim regulations to abolish the Cook, IL, nonappropriated fund (NAF) Federal Wage System wage area and add Cook County, IL, as an area of application to the Lake, IL, NAF wage area for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

**DATES:** This interim rule becomes effective on November 23, 1994. Comments must be received by December 23, 1994. Employees paid rates from the Cook, IL, NAF wage schedule will continue to be paid from that schedule until their conversion to the Lake, IL, NAF wage schedule effective on December 5, 1994.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606-2848.

**SUPPLEMENTARY INFORMATION:** The Department of Defense recommended to the Office of Personnel Management that the Cook, IL, NAF wage area be abolished and that Cook County be assigned to another wage area. With the scheduled 1995 closing of the host

installation, Naval Air Station, Glenview, IL, there will no longer be a local activity with the capability to do the survey. There will, however, still be about 44 NAF employees in Cook County.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

- (1) Proximity of largest activity in each county;
- (2) Transportation facilities and commuting patterns; and
- (3) Similarities of the counties in:
  - (i) Overall population;
  - (ii) Private employment in major industry categories; and
  - (iii) Kinds and sizes of private industrial establishments.

These criteria are discussed in turn below.

Lake County, IL, is much closer to Cook County than any other NAF wage area. Distances from Naval Air Station, Glenview, IL, to the host activities of the surrounding wage areas are as follows: Great Lakes Naval Training Center, Lake County, 35 km (22 miles); Rock Island Arsenal, Rock Island County, 285 km (177 miles); Fort Benjamin Harrison, Marion County, IN, 325 km (202 miles); and Scott Air Force Base, St. Clair County, 509 km (316 miles).

Transportation facilities and commuting patterns show Cook County to be much more closely associated with Lake County than the other NAF wage areas. Transportation facilities consist of interstate highways providing access from Glenview to each of the surrounding wage areas. An analysis of 1990 commuting patterns data indicates that 2,356,264 workers live in Cook County. Of these, 2,148,226 (91 percent) also work in Cook County. Of the counties under consideration, more Cook residents (39,585) commute to work in Lake County than any of the others. Only 211 Cook County residents commute to Marion County, IN, and none commute to Rock Island or St. Clair Counties.

The overall populations of Marion County (797,159) and Lake County (516,418) are much smaller than Cook County (5,105,067) but are more similar to Cook County than either Rock Island County (148,723) or St. Clair County (262,852).

In terms of private industry employment in major industry

categories and kinds and sizes of private industry establishments, Cook County more closely resembles Marion County, followed by Lake County, and least resembles Rock Island and St. Clair Counties.

In summary, proximity, transportation facilities, and commuting patterns strongly favor assigning Cook County to the Lake, IL, NAF wage area. In terms of population, employment, and industry, none of the candidate areas is very similar to Cook County. However, Marion County, with the largest population and employment of the areas reviewed, is the most similar, and Lake County is the next most similar. On balance, evaluation under the criteria favor the definition of Cook County to the Lake, IL, NAF wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Employees paid rates from the Cook, IL, NAF wage schedule will be converted to the Lake, IL, NAF wage schedule on December 5, 1994, the date the current Cook, IL, NAF wage schedule would have been superseded were the Cook wage area not abolished.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the October 1994 Cook survey must otherwise begin immediately.

### 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 Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

James B. King,  
Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

**PART 532—PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**Appendix D to Subpart B of Part 532 [Amended]**

2. In Appendix B to the subpart B, the listing for the State of Illinois is amended by removing the entry for Cook.

3. Appendix D to subpart B is amended by removing the wage area list for Cook, Illinois, and by revising the list for Lake, Illinois, to read as follows:

**Appendix D to Subpart B of Part 532—  
Nonappropriated Fund Wage and Survey Areas**

\* \* \* \* \*

Illinois

Lake

Survey area

Illinois:  
Lake

Area of application. Survey area plus:

Illinois:  
Cook<sup>1</sup>

Wisconsin:  
Dane  
Milwaukee

<sup>1</sup>Effective date December 5, 1994.

\* \* \* \* \*

[FR Doc. 94-28856 Filed 11-22-94; 8:45 am]

BILLING CODE 5325-01-M

**5 CFR Part 890**

RIN 3206-AF74

**Federal Employees Health Benefits Program; Miscellaneous Changes**

AGENCY: Office of Personnel Management.

ACTION: Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations which implement a number of miscellaneous changes to the Federal Employees Health Benefits (FEHB) Program. The changes will improve the administration of the FEHB Program and result in better service to enrollees.

**EFFECTIVE DATE:** December 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Iadicicco, (202) 606-0191.

**SUPPLEMENTARY INFORMATION:** On May 10, 1994, OPM issued proposed regulations in the Federal Register (59 FR 24062) to clarify the last day of Open Season; give Federal retirement systems

staffs the discretion to allow annuitants to make FEHB coverage changes by other methods, such as telephone requests; allow legally separated employees and annuitants covered as family members under their spouses' FEHB enrollment to enroll in FEHB for self only or self and family coverage; extend to employees whose FEHB enrollment terminated when they entered on duty in a uniformed service and who retire on an immediate annuity from their Federal civilian position while on such duty the option of reinstating FEHB coverage upon retirement; permit annuitants, whose entire annuity or compensation has been waived or suspended, to pay FEHB premiums directly to their retirement system or the Office of Workers' Compensation Programs for any period of waiver or suspension which is three months or more; require agencies to counsel employees entering leave without pay (LWOP) status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary.

These final regulations cover all of the changes in the proposed regulations except the requirement that agencies counsel employees entering LWOP or whose pay is insufficient to cover their FEHB premium payments. We will issue separate interim regulations on that change.

We received comments from two FEHB plans, two Federal agencies, and one retiree organization. One commenter agreed that the proposed changes will result in better service to enrollees and considered the change to allow annuitants to make FEHB coverage changes by telephone especially significant. The commenter recommended that retirement systems establish a dedicated telephone number, or a system that will record FEHB coverage change requests. OPM is doing this and more. OPM's Office of Retirement Programs (ORP) administers the Civil Service Retirement System and the Federal Employees Retirement System. ORP's Retirement Information Office (RIO) phone system at (202) 606-0500 will have a voice mail box dedicated to recording FEHB coverage change requests. RIO staff will either make the coverage change requested or call the annuitant to obtain additional information required before making the change. In addition, ORP will not limit annuitants to calling RIO to request a coverage change. At first, both RIO and ORP's Insurance Services Branch will be

authorized to take the calls and make the changes. Eventually, all staff in ORP will accept requests and process coverage changes.

The commenter also recommended that other retirement systems allow their annuitants to make FEHB coverage changes by telephone and follow the OPM "model" in order to minimize the confusion that would occur if other retirement systems used a different model. Our intention is to give retirement systems the discretion to accept alternatives to a properly completed health benefits registration form (SF 2809), but not require the retirement systems to do so. Our reasoning is that it is the responsibility of each retirement system to determine how to best serve their annuitants. OPM has determined that our annuitants are best served by allowing them to make FEHB coverage by telephone. Other retirement systems may decide, based on their current capabilities or other factors, not to allow telephone requests. Of course, we are more than willing to share our knowledge and procedures with other retirement systems who want to follow our "model."

Three commenters expressed concern that allowing telephone requests increases the possibility of unauthorized coverage changes by someone other than the annuitant, and will result in misunderstandings between the annuitant and OPM. Two commenters suggested that the retirement system send a notice of the coverage change to the annuitant. OPM agrees with this suggestion and is revising the regulations to require the retirement system to promptly give annuitants written notification of the change in coverage. ORP already follows this requirement by automatically generating notices of FEHB changes to provide annuitants with an early opportunity to reverse erroneous or unauthorized changes.

One commenter suggested as an alternative to telephone requests we allow annuitants to submit a written request to OPM at a post office box number specifically designated for health benefits requests or to fax their requests. OPM already has a post office box number specifically designated for health benefits requests. In contrast to a telephone call, a post office box does not eliminate the time it takes for the request to be delivered to OPM. The faxing of requests does save time, but most annuitants do not have convenient, inexpensive access to a fax machine. However, under these regulations retirement systems have the authority to accept faxed requests for coverage changes and OPM will do so.

One commenter was concerned that telephone requests would not be processed by retirement system staff because of the lack of a written document. The commenter suggested allowing changes by letter because it would provide written documentation of the request. We agree that a retirement system must be confident that telephone requests will be processed and be processed accurately before the retirement system accepts telephone requests. We are confident that ORP will accurately process telephone requests for three reasons. First, ORP staff already have a great deal of experience handling telephone requests for other changes, such as changes of address. Second, ORP staff already have developed procedures to follow when they handle telephone requests for FEHB coverage changes. Third, in the rare case the telephone request is incorrectly processed or not processed at all, the annuitant will soon become aware of the error through the retirement system's notice of the coverage change, or the lack of notice and the health benefits enrollment data included in their next monthly annuity payment statement.

Two commenters stated that it is extremely important for the retirement system to obtain all the pertinent information from the annuitant and accurately communicate the information to the FEHB plans. One of the commenters stressed that accurate communication of dependent information is especially important. The other commenter recommended that the retirement system staff person complete a SF 2809 while taking the request. We agree that when taking a telephone request the retirement system staff needs to collect and communicate to the FEHB plans the same information they provide for all other coverage changes. Therefore, we are revising the proposed regulations by specifying that alternative methods of making FEHB coverage changes, such as telephone requests, must transmit to the health benefit plans the information they require before accepting an enrollment. Because OPM uses a more advanced method to transmit information to the plans, there is no need for OPM staff to prepare a SF 2809 when taking a telephone request. However, for retirement systems who use the SF 2809 to transmit information to the plans, filling out the SF 2809 when taking the telephone request is a practice that should be strongly considered.

One commenter stated that allowing OPM retirement system staff to make coverage changes based on telephone requests may cause problems in tracking

coverage changes. We are confident tracking problems will not occur because ORP has had for many years an on-line tracking system to record all coverage changes. The tracking system creates an FEHB change history file for each annuitant.

One commenter responded to our statement in the supplementary information section of the proposed regulations that most employees work near the office responsible for their FEHB actions by noting a significant percentage of their agency's employees work at remote sites. The commenter believes that there are other agencies with similar workforces and requested OPM to make this logistical situation an important consideration in its future policy and program planning. OPM has always been aware that certain agencies, because of their mission, have a significant percentage of employees at remote locations. We are also keenly aware of the need to increase the efficiency of Federal personnel operations through automation. Consequently, we are considering a regulatory change that would allow agencies to automate their FEHB enrollment processing and invite all interested agencies to contact us.

One commenter concurred with the change allowing a legally separated employee or annuitant covered as a family member under his or her spouses' FEHB enrollment to enroll in FEHB for self only or self and family coverage. The commenter also asked whether this change means an employee with a self and family enrollment can drop the coverage of their separated spouse, if the spouse is ineligible to enroll or decides not to enroll for FEHB coverage. An employee may switch to self only coverage at any time and in that way drop the coverage of their separated spouse. However, unless a separated spouse has his or her own enrollment, he or she remains covered under the employee's self and family enrollment.

We received three comments discussing the fact that while the regulations would allow the dual enrollment of legally separated employees or annuitants, they did not allow a person to be covered and receive benefits under more than one enrollment. The regulations require each enrollee to notify the insurance carrier of the names of family members covered under his or her enrollment that are not covered under the other enrollment.

One commenter wanted to know the employing office's responsibility for ensuring that the employee notifies the insurance carrier of covered family

members. An employing office, when it becomes aware or strongly suspects that both members of a legally separated couple are enrolled or enrolling in the FEHB Program and at least one has a self and family enrollment, is responsible for informing the employee that he or she must notify the insurance carrier of the family members covered under the enrollment that are not covered under the other enrollment.

One commenter strongly recommended that employing offices should include the carrier code and the family members covered under the enrollments of both legally separated spouses in the remarks section of the SF 2809. The commenter believes this will assist the FEHB carriers to contact other carriers when necessary. We think this is a good idea and recommend offices that send the SF 2809 to carriers follow this practice whenever possible and offices that do not send the SF 2809 find another method to send carriers this information.

One commenter was concerned about the employing office's responsibility in cases where a person is covered and receives benefits under more than one enrollment because the employee did not notify the carrier. Carriers will contact employing offices directly to resolve any dual coverage cases they discover. Employing offices are responsible for assisting carriers in resolving these cases. Employing offices are also responsible for informing carriers when they become aware a person is being covered and receiving benefits under more than one enrollment.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

#### 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 recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,  
Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised 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.

2. In § 890.101, the definition of *Register* is revised to read as follows:

### § 890.101 Definitions; time computations.

*Register* means to file with the employing office a properly completed health benefits registration form, either electing to be enrolled in a health benefits plan or electing not to be enrolled. Retirement systems may accept alternative methods, such as telephone requests, in substitution of a properly completed health benefits registration form. Alternative methods must transmit to the health benefits plans the information they require before accepting an enrollment. In addition, for enrollments and cancellations to be valid, the signature of the requesting individual must be on the request, or on a form from the retirement system to the requesting individual giving notice of the enrollment or cancellation. For changes of enrollment, the signature of the requesting individual is not required but the retirement system must promptly give to the requesting individual written notice of the change of enrollment. *Register to enroll* means to register an election to be enrolled. *Enrolled* means a valid registration form has been accepted by the employing office, or an alternative method has been accepted by the retirement system, and the enrollment in a health benefits plan approved by OPM under this part has not been terminated or cancelled.

### § 890.301 [Amended]

3. In § 890.301, paragraph (c) is amended by removing “§ 890.304(a)(4)” and adding in its place “§ 890.304(a)(5)”; paragraph (d)(1) is amended by removing “through the Friday of the first full work-week in December” and adding in its place “through the Monday of the second full workweek in December”.

4. In § 890.302, paragraph (a)(2) is revised, and paragraph (a)(3)(i) is amended by adding the words “or legally separated” after the word “divorced”, to read as follows.

### § 890.302 Coverage of family members.

(a) \* \* \*

(2) *Dual enrollment—spouse.* (i) To protect the interests of the children, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though his or her spouse also has a self and family enrollment. Generally, such dual enrollments are permitted only where two employees or annuitants are married, each with children from prior marriages who do not live with them, or are legally separated, with each spouse retaining custody of his or her own children by a prior marriage. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

(ii) To protect the interests of legally separated Federal employees, annuitants and their children, a legally separated employee or annuitant may enroll in his or her own right in a self only or self and family enrollment even though his or her spouse also has a self and family enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

5. In § 890.305, paragraph (b) is revised to read as follows:

### § 890.305 Reinstatement of enrollment after military service.

(b) An employee whose employing office terminates his or her enrollment because his or her order to enter on duty in a uniformed service is for a period longer than 30 days, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, may reinstate his or her enrollment by asking to do so within 60 days after retirement. In the absence of such a request, the retirement system automatically reinstates the enrollment on the day the person separates from the uniformed service. For the retirement system to reinstate the enrollment, the individual must have been covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever is shorter.

6. Section 890.307 is revised to read as follows:

### § 890.307 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraphs (b) and (f) of this section, when annuity or compensation is entirely waived or suspended, the annuitant's enrollment continues for not more than 3 months (not more than 12 weeks for annuitants whose compensation under subchapter I of chapter 81 of title 5, United States Code, is paid each 4 weeks). If the waiver or suspension continues beyond this period, the employing office will notify the annuitant in writing that the employing office will terminate the enrollment effective at the end of the period, subject to the temporary extension of coverage for conversion, unless the annuitant elects to make payment of the premium directly to the employing office during the period of waiver. If the annuitant elects to have the enrollment terminated, the employing office automatically reinstates the enrollment on a prospective basis when the annuitant again receives payment of annuity or compensation. The employing office will make the withholding for the period of waiver or suspension during which enrollment was continued (i.e., 3 months or less).

(b) If the annuitant elects to pay premiums directly, he or she must send to the employing office his or her share of the subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The annuitant must pay after each pay period he or she is covered in accordance with a schedule established by the employing office. If the employing office does not receive payment by the date due, the employing office will notify the annuitant by certified mail return receipt requested that coverage will continue only if payment is made within 15 days after receipt of the notice. The employing office will terminate the enrollment of an annuitant who fails to pay within the specified time frame. The employing office will automatically reinstate the enrollment on a prospective basis when payment of annuity or compensation resumes.

(c) If the annuitant is prevented by circumstances beyond his or her control from paying within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. The annuitant must file the request within 30 calendar days from the date of termination, and must include supporting documentation. The employing office

will determine if the annuitant is eligible for reinstatement of coverage; and, when the determination is affirmative, reinstate the coverage of the annuitant retroactive to the date of termination. If the determination is negative, the annuitant may request a review of the decision as provided in § 890.104.

(d) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (b) of this section is retroactive to the end of the last pay period for which the employing office timely received payment.

(e) The employing office will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by OPM.

(f) If suspension of annuity or compensation is because of reemployment, the reemploying office must make the withholding currently and enrollment continues during reemployment.

#### § 890.701 [Amended]

7. Section 890.701 is amended by removing the last sentence of the definition of *Medically underserved area*.

#### § 890.808 [Amended]

8. In § 890.808, paragraph (a) is amended by removing “§ 890.805(d)” and adding in its place “§ 890.805(b)” and by removing “§ 890.805(e)” and adding in its place “§ 890.805(c)”.

[FR Doc. 94-28929 Filed 11-22-94; 8:45 am]  
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Chapter VII and Part 703

RIN 0560-AD59

#### Wetlands Reserve Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

**SUMMARY:** Title XII, section 1237 of the Food Security Act of 1985 (1985 Act), as amended, was amended by the Omnibus Budget Reconciliation Act of 1993 to specify the number of acres the Secretary of Agriculture shall enroll in the Wetlands Reserve Program (WRP). This final rule: adopts, with changes, the interim rule published in the *Federal Register* on January 27, 1994; makes other minor modifications for clarity and ease of administration, and; revises the policy regarding the

eligibility of certain land for enrollment in the WRP. In addition, this rule amends 7 CFR Chapter VII to reflect the abolishment of ASCS and the establishment of the Farm Service Agency in the recent Department of Agriculture reorganization.

EFFECTIVE DATE: November 23, 1994.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Farm Service Agency, P.O. Box 2415, room 4714-S, Washington, DC 20013-2415; telephone 202-720-6221.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866. It has been determined significant because of the need for interagency coordination.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because FSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have any significant adverse impact on the quality of the human environment. Therefore, neither an environmental impact statement nor environmental assessment is needed. Copies of a final environmental evaluation are available upon request.

##### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

##### Paperwork Reduction Act

The information collection requirements of this final rule at 7 CFR part 703 have been approved through January 31, 1997, by OMB under provisions of 44 U.S.C. 33. The public reporting burden for the information collections that would be required for compliance with these regulations is

estimated to average 39 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

##### Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR part 780 must be exhausted.

##### Discussion of Program

The current regulations in 7 CFR part 703, published as an interim rule on January 27, 1994 (59 FR 3772), implemented the 1994 WRP, which is authorized by Title XII of the 1985 Act. Under the WRP, FSA will purchase easements, in lump-sum payments, from persons owning cropland who voluntarily agree to restore and protect farmed wetlands, prior converted croplands, substantially altered lands, and eligible adjacent land. Fund and acreage allocations will be provided to States based on landowner interest and other factors as determined by the Deputy Administrator, State and County Operations, FSA, in consultation with the Natural Resource Conservation Service and the Fish and Wildlife Service. Land eligible for enrollment in the WRP includes farmed wetlands, prior converted croplands, but not land converted after December 23, 1985, or substantially altered lands, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands and the cost of acquiring an easement. FSA is also permitted to include in the program:

(1) Farmed wetlands, prior converted croplands, substantially altered lands, and lands which are enrolled in the Conservation Reserve Program (CRP), as authorized by Title XII of the 1985 Act, with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract;

(2) Other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would add to the value of the easement; and

(3) Riparian areas that link wetlands which are protected by easements or by some other device or circumstance that achieves the same purpose as an easement.

Landowners are not eligible to receive funding under both the Emergency Conservation Program (ECP) and the WRP with respect to the same acreage. ECP payments received with respect to acreage offered for WRP must be refunded, provided the ECP practice is still within its lifespan provisions, before any WRP payment will be disbursed.

This final rule does not impact the Emergency Wetlands Reserve Program as authorized by the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 (Pub. L. 103-75).

#### Discussion of Comments

FSA received 4 letters containing 23 comments concerning the interim rule published January 27, 1994. Entities responding included national wildlife and conservation organizations and one State farm organization.

Changes in this final rule from the interim rule of January 27, 1994, are minor. Changes have been made for clarity, editorial purposes, and to facilitate the application of the regulations. In addition, reference has been added to the provisions in § 703.6 with respect to the eligibility of foreign persons to participate in the WRP and provisions for eligible land have been revised in § 703.7.

A comment was received from one respondent who recommended that FSA use a more open process than what was used during the first WRP signup period. Specifically, ranking factors and weights and any State level modifications should be available and understandable. FSA had already adopted this policy, effective for the second signup period.

Another respondent recommended that FSA mount a campaign to educate landowners about WRP. FSA has made significant efforts to educate landowners about WRP through formal public meetings, informal question and answer sessions, and other information activities, such as, press releases. Meetings were held with nongovernment organizations, including farm and commodity groups, conservation and environmental organizations, attorneys, lenders, and appraisers, where the organizations were encouraged to distribute information to their constituents.

One respondent was pleased to see more explicit environmental criteria in

the rule and more discretion given to State level Federal officials and resource professionals.

Another respondent recommended that the Federal government help pay for the maintenance of the acreage enrolled in WRP. Neither the 1985 Act nor the laws governing real estate acquisition by the Federal government provide authority to adopt this recommendation. Landowners will be fully informed by FSA personnel of maintenance requirements prior to filing the easement and the landowner may withdraw from the WRP, without the assessment of any penalty, at any time prior to the filing of the WRP easement.

Several comments were received regarding the appraisal process. Respondents generally accepted the appraisal process. However, one respondent was concerned about the logistics of obtaining and paying for appraisals for all applicants. FSA will not appraise all sites on which an intention was submitted. Appraisals will be performed only on sites that are tentatively selected through the evaluation process and have been agreed to by the landowner.

Another respondent believes that local governments will lose a source of revenue as property in WRP may be devalued. The respondent recommends the Federal government supplement local governments with the tax money that is lost. FSA has no authority to implement this recommendation. It should also be noted that in a number of cases, land enrolled in the WRP yields an increased land value.

One respondent inquired about landowners requirements with capital gains tax on land entered into the WRP. FSA has no responsibilities regarding this and other tax issues. Landowners are advised to seek assistance from their attorney or State and Federal tax officials.

The discussion that follows is organized in the same sequence as the final rule.

#### Section 703.3—Definitions

For clarity, a definition for "restoration" has been added to read "restoration means the restoration of both the hydrology and native vegetation that occurred on the site prior to the conversion of a wetland."

#### Section 703.7—Eligible land

One respondent commented that easements should be accepted on lands where existing hydrologic conditions exist for wetlands to be restored or where such hydrologic conditions will be restored. FSA has previously adopted this provision.

Another commented that § 703.7(a)(1)(ii) needed to include the phrase "and cost of acquiring the easement" at the end of the sentence to be consistent with § 703.2(f)(1). FSA agreed and has amended this section accordingly.

#### Section 703.9—Transfer of lands from the CRP to the WRP

One respondent suggested the rule be modified to allow Water Bank Program (WBP) lands to be enrolled in the WRP similar to the process used for CRP. FSA does not have the authority to implement this recommendation. The 1985 Act includes references to land enrolled in the CRP, but not WBP acreage, as "other eligible land."

#### Section 703.12—Obligations of the Landowner

Three respondents commented on the easement length. One recommended FSA modify the rule to allow the use of 30-year easements in States where permanent easements are prohibited; another recommended the duration of the easements should remain perpetual but allow for landowners to buy back land after 30 years if the purpose of the easement no longer exists; and the third recommended allowing farmers to choose between perpetual and long-term easements. Interest in WRP with permanent easements far exceeds the appropriation levels for the program; therefore, FSA will continue to give priority to permanent easements.

One respondent commented in support of the easement filing deadline. However, FSA may need some flexibility to adjust the deadline period. FSA believes 12 months from the end of signup is adequate time to have all the appropriate administrative work completed for filing an easement. In exceptional cases, the regulation allows the Deputy Administrator, FSA, to authorize additional time for completion of the enrollment process.

Another respondent recommended FSA convert from a reserve interest deed to a "hybrid" type of easement used by private nonprofit organizations which spells out specific land use restrictions as well as a general prohibition on incompatible uses and relies on continuous monitoring by accountable local partners to assure compliance. The respondent believes this approach results in the enrollment of higher-quality wetlands by appealing to more landowners and it would yield greater conservation benefits than the current FSA approach. The respondent is skeptical of the "top-down law enforcement" approach to easement compliance.

Substantial environmental benefits have been secured through the filing of permanent easements since fiscal year 1992 and interest has far exceeded enrollment authorities. FSA believes that the greater environmental benefits, if any, as proposed by the respondent will be minimal while significant losses in assurances that the acreage will be maintained will be suffered. Therefore, FSA did not adopt the recommendation.

Another respondent commented that the drainage on acreage surrounding the WRP site should not be impeded. FSA has been assured by the technical agencies that plans will be developed with landowners to ensure the landowners conservation objectives are met while ensuring that no acreage will be enrolled that is not a viable wetland.

Another respondent agreed with the provision that allows landowners to limit public access to the WRP site.

**Section 703.13—Payments to Landowners by FSA**

One respondent commented that USDA administrative guidelines should make clear that the cost of land appraisals required by this rule will be paid with Federal funds even when a landowner eventually decides not to enroll in WRP. FSA has previously implemented this procedure.

**Section 703.15—Wetlands Reserve Plan of Operations**

Respondents were generally in favor of the provisions in this section. However, one respondent inquired whether landowners would be able to sell mineral rights on acreage enrolled in WRP. FSA has determined that, providing the extraction of the minerals associated with the sale of the mineral rights is compatible with the wetland functions and values, landowners may continue to utilize the rights in the normal manner. However, if the rights are incompatible with the wetland site, the site would not be accepted into the program.

**Section 703.25—Appeals**

One respondent thought that withholding appraisals and supporting documentation from the public was inappropriate. FSA added this provision to conform with guidelines established in 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. Accordingly, no change has been made to this regulation.

**Establishment of the Farm Service Agency**

Pursuant to Public Law 103-354, the Federal Crop Insurance Reform and

Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010-1, Reorganization of the Department of Agriculture, on October 20, 1994. That memorandum orders the abolishment of the Agricultural Stabilization and Conservation Service and the establishment of the Farm Service Agency, which assumes the functions previously performed by the Agricultural Stabilization and Conservation Service. This rule includes amendments to 7 CFR chapter VII which are necessary to bring agency regulations into alignment with the departmental reorganization.

**List of Subjects in 7 CFR Part 703**

Administrative practices and procedures, Appraisals, Compliance procedures, Easements, Natural resources, Technical assistance and Wetlands Reserve Plan of Operations (WRPO).

Accordingly 7 CFR Chapter VII and part 703 are amended as follows:

1. The heading of 7 CFR chapter VII is revised to read as follows:

**CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE**

2. In 7 CFR chapter VII, all references to "Agricultural Stabilization and Conservation Service" are revised to read "Farm Service Agency", and all references to "ASCS" are revised to read "FSA".

3. The interim rule published on January 27, 1994 (59 FR 3772), is adopted as final with the following changes set forth below, and part 703 is further amended as follows:

**PART 703—WETLANDS RESERVE PROGRAM**

A. The authority citation for 7 CFR part 703 continues to read as follows:

Authority: 16 U.S.C. 3837 *et seq.*

**§ 703.1 [Amended]**

B. In § 703.1, the introductory paragraph (a) is amended by removing the words "shall be" in the second sentence and inserting the word "was" in their place, and paragraph (b) is amended by adding "riparian areas," after "prior converted croplands," in the first sentence.

C. Section 703.3 (b) is amended by adding the definition of "Restoration" to read as follows:

**§ 703.3 Definitions.**

\* \* \* \* \*  
(b) \* \* \*  
\* \* \* \* \*

*Restoration* means the restoration of both the hydrology and native vegetation that occurred on the site prior to conversion to a wetland.

\* \* \* \* \*

D. Section 703.6 is revised to read as follows:

**§ 703.6 Eligible person.**

To be eligible to offer land for the WRP, a person must:

- (a) Be a U.S. citizen or otherwise meet the provisions in 7 CFR part 1498;
- (b) Be the owner of the eligible property for which enrollment is sought;
- (c) Have been the owner of such land for at least the preceding 12 months prior to the end of the period in which the intent to participate is declared, as provided in this part, unless:

(1) It is determined by FSA that the land was acquired by will or succession as a result of the death of the previous owner; or

(2) It is determined by FSA that adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the WRP.

5. Section 703.7 is amended by revising paragraphs (a)(1)(i), (a)(2)(i) and (d)(2) as follows:

**§ 703.7 Eligible land.**

(a)(1) \* \* \*

(i) Is wetland farmed under natural conditions, a farmed wetland, prior converted cropland except that converted lands shall not be eligible for enrollment if the conversion was not commenced prior to December 23, 1985, substantially altered lands, or any former wetland intensively managed for a food or forage crop; and

(ii) Merits inclusion in the program based on the likelihood of successful restoration of the enrolled land and the resultant wetland values when considering restoration cost and the cost of acquiring the easement.

(2) \* \* \*

(i) Have been annually planted or considered planted to an agricultural commodity or have produced any other crop intensively managed for food or forage as approved by the Deputy Administrator in at least 1 of the 5 crop years 1986 through 1990, and have been capable of being cropped in 1992 or 1993;

\* \* \* \* \*

(d) \* \* \*

(2) Land adjacent to the restored wetland, which would contribute significantly to the restoration of adjacent wetlands, but not more than 25 percent of the total easement area as needed to protect the functions and values of wetlands restored under this

part, unless the Deputy Administrator determines a larger area is necessary to meet the objectives of the WRP. These areas are limited to buffer areas, inclusions, and noncropped natural wetlands;

\* \* \* \* \*

#### § 703.8 [Amended]

6. Section 703.8(b) is amended by removing the words "timber stands or".

#### § 703.13 [Amended]

7. In § 703.13, the introductory text of paragraph (a) is amended by adding the words "after an easement is filed" at the end of the first sentence.

#### § 703.16 [Amended]

8. Section 703.16 is amended by adding the words "as previously determined by the technical agency" at the end of the paragraph.

Signed at Washington, DC, on November 10, 1994.

R.E. Rominger,

Acting Administrator, Farm Service Agency  
and Deputy Secretary, United States  
Department of Agriculture.

[FR Doc. 94-28598 Filed 11-22-94; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

12 CFR Parts 550, 552, 562, 563 and 571

[No. 94-246]

RIN 1550-AA68

### Annual Independent Audits

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is adopting a final rule that amends its annual independent audit requirements for savings associations to be more consistent with those applicable to other federally insured depository institutions. Pursuant to Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) all insured depository institutions with total assets of \$500 million or more are required to obtain an annual independent audit. OTS is amending its rules in order to eliminate the mandatory annual independent audit requirement for small savings associations with composite CAMEL ratings of 1 or 2; to rely on the FDICIA section 112 independent audit

requirements for savings associations with assets of \$500 million or more; and to adopt regulatory language to allow OTS to require an independent audit of any savings association with assets of less than \$500 million, as needed for purposes of safety and soundness.

EFFECTIVE DATE: December 23, 1994.

#### FOR FURTHER INFORMATION CONTACT:

David H. Martens, Chief Accountant, (202) 906-5645, Timothy J. Stier, Deputy Chief Accountant, (202) 906-5699, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Description of Proposal

On March 22, 1994, OTS published a notice of proposed rulemaking to amend the regulatory framework governing independent audits of savings associations' financial statements. The proposed amendments were designed to achieve comparability with the framework used by the other Federal banking agencies<sup>1</sup> for banks. Historically, OTS regulations and policies required all savings associations and savings and loan holding companies to obtain an annual independent audit of their financial statements. In contrast, the regulations and policies of the other Federal banking agencies generally encourage all banks and bank holding companies to obtain an annual independent audit, but only mandate that certain institutions obtain audits. OTS' proposal recognized that a well planned and executed independent audit could improve the reliability of regulatory reports, such as the Thrift Financial Report (TFR). The proposal also recognized, however, that the current OTS audit requirement could be modified to reduce regulatory burden without increasing the risk of unsafe and unsound regulatory reporting.

Under the proposal, savings associations with assets of \$500 million or more would continue to be audited pursuant to Section 112 of FDICIA<sup>2</sup> and the FDIC's implementing regulation 12 CFR Part 363. The FDIC regulation requires audits of all FDIC-insured depository institutions with assets of \$500 million or more, includes financial statement and internal control reporting requirements, and sets minimum

<sup>1</sup> The term "other Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

<sup>2</sup> This provision is codified at section 36 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1831m.

qualifications for independent public accountants and for members of the board of directors' audit committee.

Under the proposal, small savings associations (i.e., those with assets of less than \$500 million), were required to obtain annual independent audits of their financial statements whenever OTS believed an independent audit was necessary to supplement other safety and soundness supervisory activities. The proposal included a request for comment on the specific safety and soundness criteria that should be used to determine when such an audit would be appropriate. The proposal required that such audits utilize the same qualifications for independent public accountants as those applicable to institutions covered by the FDIC regulation. The proposal provided that when small savings associations obtained an audit voluntarily the audit would be conducted in accordance with generally accepted auditing standards (GAAS) and the resulting reports and supporting audit work papers would be made available to OTS upon request.

Finally, the proposal included specific requests for comment on the audit requirements for trust operations, holding company financial statements, and savings associations overall. The objective of these inquiries was to assist OTS in developing an audit approach for these types of audits that would be responsive to the safety and soundness needs and comparable to the approach used by the other Federal banking agencies.

##### II. Summary of Comments and OTS Response

OTS received ten comment letters on the proposal. Commenters included seven savings associations, two trade associations, and a Federal banking agency. Overall, the commenters were supportive of the proposal and offered suggestions on implementing the approach. Only one commenter (a thrift) expressed significant opposition to the elimination of the mandatory audit requirement. Commenters also responded to the six specific requests for comment that were included in the proposal. The issues and comments raised by those responses are addressed below.

##### A. Benefits of Annual Independent Audits to Small Savings Associations

Five small savings associations commented on the issue of whether audits were beneficial to small savings associations and improved the accuracy of the Thrift Financial Report (TFR). Four of the commenters suggested that audits were of little or no benefit since