

the agency that he or she has other coverage for the child or children.

\* \* \* \* \*

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

**§ 890.306 Opportunities for annuitants to change enrollment or to reenroll; effective dates.**

\* \* \* \* \*

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time.

*Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

\* \* \* \* \*

(f) \* \* \*  
(1) \* \* \*

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

\* \* \* \* \*

■ 5. In § 890.502 add a new sentence after the first sentence in paragraph (b)(2), redesignate paragraph (b)(4) as paragraph (b)(4)(i), and add a new paragraph (b)(4)(ii) to read as follows:

**§ 890.502 Employee withholdings and contributions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate

his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. \* \* \*

\* \* \* \* \*

(4)(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

\* \* \* \* \*

**PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS**

■ 6. The authority citation for part 892 continues to read as follows:

*Authority:* 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Amend by revising § 892.207 to read as follows:

**§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?**

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.208 and § 892.209.

■ 8. Revise the section heading and add a new paragraph (c) to § 892.208 to read as follows:

**§ 892.208 Can I change my enrollment from self and family to self only at any time?**

\* \* \* \* \*

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Add a new paragraph (c) to § 892.209 to read as follows:

**§ 892.209 Can I cancel FEHB coverage at any time?**

\* \* \* \* \*

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

[FR Doc. 03–24792 Filed 9–30–03; 8:45 am]

BILLING CODE 6325–50–P

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 892**

**RIN 3206–AJ17**

**Health Insurance Premium Conversion**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on health benefits premium conversion. Premium conversion enables employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided in the Internal Revenue Code.

**EFFECTIVE DATE:** October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Laurie Bodenheimer, (202) 606–0004, or e-mail to [lrbodenh@opm.gov](mailto:lrbodenh@opm.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 19, 2000, OPM issued interim final regulations in the **Federal Register**

(65 FR 44644) to implement a health insurance premium conversion plan for employees participating in the FEHB Program. These interim regulations were effective on September 18, 2000, and are located at part 892.

The premium conversion plan is part of a "cafeteria plan" under section 125 of the Internal Revenue Code. OPM executed a separate plan document to comply with section 125 requirements, which is available on OPM's Web site: <http://www.opm.gov/insure/health>. OPM also issued separate instructions to personnel and payroll offices.

The premium conversion plan took effect on October 1, 2000. Under the plan, employees' health benefit premium withholdings are treated as a pre-tax salary deduction. Because premium conversion lowers employees' taxable income, it reduces their tax burden. The reduction in taxable income reduces the base for Federal income tax, Social Security and Medicare taxes, and, in most States and localities, State and local taxes based on income.

While most Federal employees are now covered by OPM's premium conversion plan, the Federal Judiciary, the United States Postal Service, and some smaller Executive Branch agencies with independent compensation-setting authority previously implemented their own premium conversion plans. Employees of those entities are not covered by the premium conversion plan described here.

All other employees in the Executive Branch of the Federal government who are participating in the FEHB Program, and whose pay is issued by an Executive Branch agency, automatically have their salary reduced (through a Federal allotment) and their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the FEHB Program who are employed outside the Executive Branch, or whose pay is not issued by an Executive Branch agency, have their salaries reduced and their FEHB premiums paid under our premium conversion plan if their employer, in coordination with their payroll office, agreed to offer participation in the plan. However, any individual enrolled in the FEHB Program who does not want to participate in premium conversion may waive participation, subject to the limitations in these regulations.

To ensure that the premium conversion plan qualifies for pre-tax treatment of health insurance premiums, OPM amended its allotment regulations at 5 CFR part 550, subpart C. Each employee participating in premium conversion makes an

allotment to his or her employing agency in the amount of the employee share of the FEHB insurance premium. The agency then uses that amount to pay the employee's premium. The allotment is automatic unless the employee elects to waive premium conversion.

We received comments from three Federal agencies and one Federal employee. One Federal agency had several questions and comments concerning consequences of employee failure to pay union dues when enrolled in a plan that requires such, the availability of belated open season enrollments, LWOP, insufficient pay, early plan termination, and part-time reemployed annuitants. Each of these issues (except reemployed annuitants) was addressed in the final regulation under *Qualifying Life Events* and on the Table of Permissible Changes for Premium Conversion Election. OPM has already provided guidance to agencies on issues relating to reemployed annuitants and will continue to do so through Benefits Administration Letters and the FEHB Handbook. Another commenter asked what the effective date would be for changes from self and family to self only or for cancellations. This document incorporates the change in effective dates for FEHB changes in enrollment first published on August 31, 1998. The answer to this question now would depend upon the employee's premium conversion status, as follows:

For employees participating in premium conversion, a change to self only or cancellation can be made only during the annual open season or because of the occurrence of a qualifying life event as described in section 892.101. A change to self only made during the annual open season is effective on the same date as any other open-season change. A cancellation made during the annual open-season is effective at midnight of the day before the first day of the first pay period that begins in the next year. As of 12:00:01 a.m. on the first day of the first pay period that begins on or after January 1 of the next following year, the enrollee is no longer covered.

A change to self only related to a qualifying life event is effective on the first day of the first pay period that begins after the date the employing office receives the employee's appropriate request. A cancellation made because of a qualifying life event is effective at midnight of the last day of the pay period in which the employing office receives the appropriate request to cancel the enrollment. For convenience, we have

located all information on changes to self only and cancellation in part 892, which specifically applies to employees under premium conversion. Information on changes to self only is in section 892.208, and information on cancellation is in section 892.209.

For enrollees who are not participating in premium conversion (including employees who waived this benefit, annuitants, former spouses, and Temporary Continuation of Coverage (TCC) enrollees), a cancellation or change to self only is not considered an open-season change, even if it is submitted during open season. For effective dates see § 890.301(e)(2), or § 890.304(d)(ii).

Another commenter noted that premium conversion does affect Federal retirement plan benefits, specifically Social Security. The commenter correctly stated that the Federal Employees Retirement System (FERS) is a three-tiered retirement plan made up of Social Security Benefits, a Basic Benefit Plan, and Thrift Savings Plan Benefits. Since employee contributions to FEHB premiums are withheld pre-tax under premium conversion, the employee's taxable income is reduced. This in turn reduces the employee's Social Security taxes, which reduces career earnings, and thus reduces an individual's future Social Security benefits. The commenter requested that we disclose, discuss, and analyze this information so Federal employees make an informed decision. Our actuaries extensively analyzed the effect of premium conversion on future Social Security benefits. Based on that analysis, we concluded that most employees realize far greater savings than they lose in benefits. We provided information to agencies, in Benefits Administration Letters (BALs), and included several worksheets for employees to use to individually calculate savings and reductions in benefits. We also added a series of questions and answers on our Web site (<http://www.opm.gov/insure>) several of which specifically address the impact of premium conversion on Social Security benefits. A third commenter wondered why the rules for switching or canceling under premium conversion should be any different from current time frames in section 890.301. In order for employees to enjoy the tax benefit of premium conversion, our premium conversion plan must comply with Internal Revenue Service rules requiring an election to be irrevocable except during open season, or when a covered person experiences a qualifying life event. With this important exception, there is otherwise a great deal of

similarity between FEHB opportunities to change enrollment found at section 890.301 and premium conversion qualifying life events.

We have made editorial changes to section 892.101 to regroup and clarify qualifying life events. Within subpart B, we revised sections 892.203, 892.207, 892.208, 892.209, and 892.211. We amended the title for subpart D and revised 892.401(b) and added section 892.402 to include more specific information for employees who participate in premium conversion.

### Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866, "Regulatory Planning and Review." Because this regulation has an economic impact exceeding \$100 million annually, it is defined by that Executive Order as being "economically significant." It is classified as a major rulemaking in accordance with the Congressional Review Act because of its economic impact.

### Analysis of Costs and Benefits

In OPM's view, the benefits of this regulation substantially outweigh the costs. Under this regulation, Federal employees with health insurance through the FEHB Program are now paying their insurance premiums with pre-tax dollars, similar to how millions of private sector employees currently pay their health insurance premiums. The benefits of this change in tax status are significant: the Federal Government has become a more competitive employer and the tax liability of Federal employees decreased.

Costs of this regulation included a start-up cost in the first year to implement the program. In fiscal year 2003, the tax benefit to employees is estimated to be \$848 million: \$692 million in Federal income taxes; \$113 million in Social Security taxes; and \$43 million Social Security taxes. We expect that these estimates will increase by 7 percent a year in subsequent years.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small

entities, the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the rulemaking describing the impact of the rule on small entities and must also seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

OPM has determined that this rule will not have a significant economic impact on a substantial number of small entities. The regulation does not impact small entities.

### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more.

### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this final 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 892

Administrative practice and procedure, Government employees, Health insurance, Wages, and Taxes.

U.S. Office of Personnel Management

Kay Coles James,

Director.

■ Accordingly, OPM is adopting the interim rule (65 FR 44644) published on July 19, 2000, amending 5 CFR part 892:

### PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 1. The authority citation for part 892 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

■ 2. In § 892.101 the definition of Qualifying life event is revised to read as follows:

#### § 892.101 Definitions.

\* \* \* \* \*

*Qualifying life event* means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125-4 and includes the following:

(1) Change in family status that results in an increase or decrease in the number of eligible family members as follows:

(i) Marriage, divorce, annulment, legal separation;

(ii) Birth, adoption, acquiring a foster child that meets the definition in § 890.101(a) or a stepchild, issuance of a court order requiring an employee to provide coverage for a child;

(iii) Last dependent child loses coverage, for example, the child reaches age 22 or marries, stepchild moves out of employee's home, disabled child becomes capable of self support, child acquires other coverage by court order; and

(iv) Death of a spouse or dependent.

(2) Any change in employment status that could result in entitlement to coverage; for example:

(i) Reemployment after a break in service of more than 3 days;

(ii) Return to pay status from non-pay status if employee previously elected to terminate coverage (if employee did not elect to terminate see § 892.101 (5);

(iii) Return to receiving pay sufficient to cover premium withholdings if coverage terminated;

(iv) Your spouse or dependent changes hours from either full-time to part-time status, or the reverse, which significantly affects their eligibility for coverage;

(v) Start or end of a period of unpaid leave of absence (leave without pay [LWOP], or other non-pay status) by you or your spouse. A period of unpaid leave is a continuous unpaid leave of absence of more than one pay period; and

(vi) Start or end of your spouse's employment that affects you or your spouse's eligibility for coverage.

(3) Any change in employment status that could affect the cost of insurance, including:

(i) Change from temporary appointment with eligibility for coverage under 5 U.S.C. 8906a to an appointment that permits receipt of government contribution; and

(ii) Change from full-time to part-time status or the reverse.

(4) An employee is restored to a civilian position after serving in uniformed services as described in § 890.304 (a)(vi)(vii).

(5) Start of non-pay status and end of non-pay status if employee did not terminate coverage (if coverage terminated see § 892.101 (2)(ii)).

(6) An employee enrolled in a health maintenance organization (HMO) or a covered family member moves or becomes employed outside the geographic area from which the carrier accepts enrollments, or if already lives

or works outside the area, moves further from this area.

(7) Transfer from a post of duty within the United States to a post of duty outside the United States, or the reverse.

(8) Separation from Federal employment when the employee or employee's spouse is pregnant.

(9) An employee becomes entitled to Medicare. (For change to self only, cancellation, or change in premium conversion status see § 892.101 (11)).

(10) An employee or eligible family member loses coverage under FEHB or another group insurance coverage including the following:

(i) Loss of coverage due to termination of membership in an employee organization sponsoring the FEHB plan;

(ii) Loss of coverage of employee or eligible family member due to discontinuance in whole or part of FEHB plan;

(iii) Loss of coverage under another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(iv) Loss of coverage under Medicaid or similar State-sponsored program of medical assistance for the needy; and

(v) Loss of coverage under a non-Federal health plan, including foreign, State or local government, or private sector group health plan as described in § 890.301 (i)(6).

(11) An employee or eligible family member gains coverage under FEHB or another group insurance plan, including the following:

(i) Another Federally-sponsored health benefits program, including, TRICARE, Medicare, or Indian Health Service;

(ii) Medicaid or similar State-sponsored program of medical assistance for the needy; and

(iii) A non-Federal health plan, including foreign, State or local government, or private sector group plan.

(12) A change in an employee's spouse or dependent's coverage options, for example:

(i) Employer starts offering a different type of coverage;

(ii) Employer stops offering the type of coverage that the employee's spouse or dependent has (if no other coverage is available);

(iii) A health maintenance organization (HMO) adds a geographic service area that now makes the employee's spouse eligible to enroll in that HMO;

(iv) Employee's spouse is enrolled in an HMO that removes a geographic area that makes the spouse ineligible for coverage under that HMO, but other health plans or options are available (if

no other coverage is available see § 892.101 (10); and

(v) Change in the cost of coverage.

## Subpart B—Eligibility and Participation

■ 3. Section 892.203 is revised to read as follows:

### § 892.203 When will my premium conversion begin?

If you are newly employed or newly eligible for FEHB in a covered Executive Branch agency (as described in § 892.201(a)), your salary reduction (through a Federal allotment) and pre-tax benefit will be effective on the 1st day of the first pay period beginning on or after your employing agency receives your enrollment.

■ 4. Section 892.207 is revised to read as follows:

### § 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210). Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

■ 5. Section 892.208 is revised to read as follows:

### § 892.208 Can I change my enrollment from self and family to self only at any time?

If you are participating in premium conversion you may change your FEHB enrollment from self and family to self only under either of the following circumstances:

(a) During the annual open season. A change to self only made during the annual open season takes effect on the 1st day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A change to self only made because of a qualifying life event takes effect on the first day of the first pay period that begins after the date your employing office receives your appropriate request. Your change in enrollment must be consistent with and correspond to your qualifying life event. For example, if you get divorced and

have no dependent children, changing to self only would be consistent with that qualifying life event. If both you and your spouse are Federal employees, and your youngest dependent turns age 22, changing from a self and family to two self only enrollments would be consistent and appropriate for that event.

■ 6. Section 892.209 is amended by revising paragraphs (a) and (b) as follows:

### § 892.209 Can I cancel FEHB coverage at any time?

If you are participating in premium conversion you may cancel your FEHB coverage:

(a) During the annual open season. A cancellation made during the annual open season is effective at midnight of the day before the first day of the first pay period that begins in the next year.

(b) Within 60 days after you have a qualifying life event. A cancellation made because of a qualifying life event takes effect at midnight of the last day of the pay period in which your employing office receives your appropriate request to cancel your enrollment. Your cancellation of coverage must be consistent with and correspond to your qualifying life event. For example, if you get married and you gain other insurance coverage because your spouse's employer provides health insurance for your spouse and you, then canceling FEHB coverage would be consistent with that qualifying life event. If you add an eligible family member, canceling coverage would generally not be consistent with that qualifying life event.

7. Section 892.211 is revised to read as follows:

### § 892.211 What options are available to me if I go on a period of leave without pay (LWOP) or other types of non-pay status?

(a) Your commencement of a period of LWOP is a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). (b)(1) You may continue your FEHB coverage by agreeing in advance of LWOP to one of the payment options described in paragraph (b)(2), (b)(3), or (b)(4) of this section.

(2) Pre-pay. Prior to commencement of your LWOP you may allot through payroll deduction the amount that will be due for your share of your FEHB premium during your LWOP period, if your employing agency, at its discretion, allows you to do so. Contributions under the pre-pay option may be made through premium conversion on a pre-

tax basis. Alternatively, you may pre-pay premiums for the LWOP period on an after-tax basis.

(3) Direct pay. Under the direct pay option, you may pay your share of your FEHB premium on the same schedule of payments that would be made if you were not on LWOP, as described in § 890.502(b) of this chapter. You must make the premium payments directly to your employing agency. The payments you make under the direct pay option are not subject to premium conversion, and are made on an after-tax basis.

(4) Catch-up. Under the catch-up option, you must agree in advance of the LWOP period that: you will continue FEHB coverage while on LWOP; your employer will advance your share of your FEHB premium during your LWOP period; and you will repay the advanced amounts when you return from LWOP. (Described in § 890.502(b) of this chapter.) Your catch-up contributions may be made through premium conversion.

(5) If you remain in FEHB upon your return from LWOP, your catch-up premiums and current premiums will be paid at the same time.

(c) Your return from LWOP constitutes a qualifying life event as described in § 892.101. You may change your premium conversion election (waive if you now participate, or participate if you now waive). The election you choose upon return from LWOP will apply to your current as well as your catch-up premiums.

■ 8. The title for Subpart D and paragraph (b)(1) of § 892.401 are revised to read as follows:

#### **Subpart D—Reemployed Annuitants and Survivor Annuitants**

##### **§ 892.401 Am I eligible for premium conversion if I retire and then come back to work for the Federal Government?**

\* \* \* \* \*

(b)(1) If you do not waive premium conversion, your FEHB coverage will be transferred to your employing agency, and your employing agency will assume responsibility for contributing the Government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

\* \* \* \* \*

■ 9. A new § 892.402 is added to read as follows:

##### **§ 892.402 I am a survivor annuitant as well as an active Federal employee; am I eligible for premium conversion?**

(a) If you are a survivor annuitant enrolled in FEHB who is receiving an annuity and you are employed in a position that conveys FEHB eligibility and is covered by the premium conversion plan, you are eligible to participate in premium conversion. (b)(1) If you wish to participate in premium conversion, you must notify your employing agency. Your employing agency will transfer in your FEHB coverage from the retirement system, and your employing agency will assume responsibility for contributing the government share of your FEHB coverage. Your coverage, including what FEHB plans you are eligible to enroll in, will be based on your status as an active employee and your employing agency will deduct your premiums from your salary.

(2) If you do not notify your employing agency that you wish to participate in premium conversion, you will keep your FEHB coverage as a survivor annuitant, but your contributions towards your FEHB premiums will be made on an after-tax basis. Your status as an annuitant under the retirement regulations and your right to continue FEHB as a survivor annuitant following your period of employment is unaffected.

[FR Doc. 03-24793 Filed 9-30-03; 8:45 am]

BILLING CODE 6325-50-P

#### **DEPARTMENT OF AGRICULTURE**

##### **Animal and Plant Health Inspection Service**

##### **7 CFR Part 301**

[Docket No. 02-037-2]

##### **Karnal Bunt; Regulated Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Arizona and Texas to the list of regulated areas either because they were found during detection and delineating surveys to contain a bunted wheat kernel, or because they fell within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. The interim rule also removed certain individual fields and other areas in Arizona, New Mexico, and Texas from

the list of regulated areas, either because detection and delineating surveys showed them to be free of Karnal bunt, or because they had not been used to produce Karnal bunt host crops within the last 5 years, or because they had been used to produce Karnal bunt host crops in 1 or more years following initial regulation and the crops have been tested and found free of Karnal bunt. The interim rule was necessary to help prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions that are no longer warranted.

**EFFECTIVE DATE:** The interim rule became effective on October 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-7819.

##### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the movement of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on October 3, 2002 (67 FR 61975-61980, Docket No. 02-037-1), we amended the regulations by adding certain areas in