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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM50

Prevailing Rate Systems; Redefinition of the Austin, TX and Waco, TX, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Austin, TX, and Waco, TX, appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Burleson and Lampasas Counties, TX, from the Austin wage area to the Waco wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. This final rule makes an additional correction to add the entire Syracuse-Utica-Rome, NY, wage area to Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas, which was inadvertently deleted when the CFR was published in January 2004.

DATES: This regulation is effective on May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-performance-policy@opm.gov;* or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On November 14, 2011, the U.S. Office of Personnel Management (OPM) issued a proposed rule (76 FR 70365) to redefine Burleson and Lampasas Counties, TX, from the Austin wage area to the Waco wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the above counties to a nearby FWS survey area. FPRAC did not recommend other changes for the Austin and Waco wage areas at this time. In addition, this final rule adds the entire Syracuse-Utica-Rome, NY, FWS wage area to Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas. The Syracuse-Utica-Rome wage area was inadvertently deleted when the CFR was published in January 2004. This correction does not affect the pay of any FWS employees. The proposed rule had a 30-day comment period during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will 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.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 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.

■ 2. Appendix C to subpart B is amended for the State of New York by adding ‘‘Syracuse-Utica-Rome’’ and its constituent counties after ‘‘Rochester’’ and revising for the State of Texas the wage area listings of the Austin, TX, and Waco, TX, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

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NEW YORK

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Syracuse-Utica-Rome

Survey Area

New York:
- Herkimer
- Madison
- Oneida
- Onondaga
- Oswego

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Area of Application. Survey area plus:

New York:
- Broome
- Cayuga
- Chenango
- Cortland
- Hamilton
- Otsego
- Tioga
- Tompkins

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TEXAS

Austin

Survey Area

Texas:
- Hays
- Milam
- Travis
- Williamson

Area of Application. Survey area plus:

Texas:
- Bastrop
- Blanco
- Burnet
- Caldwell
- Fayette
- Lee
- Llano
- Mason
- San Saba

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Waco

Survey Area

Texas:
- Bell
- Coryell
- McLennan

Area of Application. Survey area plus:

Texas:
- Anderson
- Bosque
- Brazos
- Burleson
- Falls
- Freestone
- Hamilton
- Hill
- Lampasas
- Leon
- Limestone

Mills
Robertson

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[FR Doc. 2012–7728 Filed 3–30–12; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

48 CFR Parts 1602, 1615, 1632, and 1652

RIN 3206–AM39

Federal Employees Health Benefits Program: New Premium Rating Method for Most Community Rated Plans

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final regulation amending the Federal Employees Health Benefits (FEHB) regulations and also the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). This final regulation makes minor changes to an interim final regulation on the same subject published June 29, 2011. The rule replaces the procedure by which premiums for community rated FEHB carriers are compared with the rates charged to a carrier's similarly sized subscriber groups (SSSGs). The new procedure utilizes a medical loss ratio (MLR) threshold, analogous to that defined in both the Affordable Care Act (ACA), and in Department of Health and Human Services (HHS) regulations and replaces the outdated SSSG methodology with a more modern and transparent calculation while still ensuring that the FEHB Program is receiving a fair rate. This will result in a more streamlined process for plans and increased competition and plan choice for enrollees. The new process will apply to all community rated plans, except those required by their state to use traditional community rating (TCR). This new process will be phased in over two years, with optional participation for non-TCR plans in the first year.

DATES: This final rule is effective May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Louise Dyer, Senior Policy Analyst, (202) 606–0770.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is issuing a final regulation to establish a new rate-setting procedure for most FEHB plans that are subject to community rating. This final rule makes minor changes to an interim final rule published June 29, 2011 that replaced the current rate negotiation process with a requirement that most community rated plans meet an FEHB-specific medical loss ratio (MLR) target. Plans that are required to use traditional community rating (TCR) per their state regulator will be exempt from this new rate-setting procedure. This final rule makes several changes to the interim final rule published June 29, 2011. First, OPM has removed a clause that said that the previous year's MLR would have no effect on the current plan year. The change was added in response to public comments and is intended to give OPM appropriate flexibility to determine a fair and accurate MLR for each plan in each year. Second, OPM has laid out a deadline for publishing the FEHB-specific MLR threshold. Third, OPM made technical changes to a certificate attesting to accurate pricing in order to accommodate a change in timing. Fourth, clarifying language explains that OPM will substitute its own credibility adjustment for that defined by HHS.

Analysis of and Responses to Public Comments

We received two comment letters on the interim final rule from FEHB carriers and carrier groups. The comments and OPM's responses are detailed below.

Comment: A commenter noted that FEHB carriers will need as much advance notice of the MLR threshold for the following year as possible. This commenter recommended early notice by OPM, even in advance of the annual Call Letter, to allow carriers to plan for rating actions and complete filings.

Response: For the first years of MLR-based rate negotiation, OPM will be gathering information about FEHB carrier MLRs which will aid in setting future MLR thresholds. OPM will make every effort to provide such advance notice as the rate negotiation methodology matures. This final regulation text states that OPM will make the MLR threshold public no later than twelve calendar months before plan years beginning with 2014.

Comment: A commenter raised the need for clarity and consistency regarding the identification and allocation of costs and revenues for the MLR calculation. Specifically, the commenter asked for additional clarification on what can be included as expenses, such as fees and charges related to Affordable Care Act implementation.

Response: As stated in the interim final regulation, OPM will adopt the HHS definition of MLR for purposes of MLR-based rate negotiation in FEHB. We anticipate that any clarifications around this calculation that are offered by HHS will be adopted by OPM. OPM will only allow costs for items that are allowed by the FEHB contract to be included in the MLR calculation.

Comment: Both commenters raised concerns about the subsidization penalty reserve account. One commenter stated that using penalty funds to subsidize other plans is inconsistent with both the current similarly sized subscriber group (SSSG) methodology and the ACA MLR rebates. Another commenter stated that OPM needs to be sure that this reserve does not act as a disincentive for carriers to operate in the most efficient way possible.

Response: OPM has intentionally structured the subsidization penalty differently from either the SSSG adjustments or the ACA MLR rebates. The subsidization penalties are to be shared among community rated plans in order to avoid a plan paying a penalty into an account from which it can solely benefit.

In response to the concern about the subsidization penalty reserve acting as a disincentive to efficiency, OPM feels the penalty will encourage plans to offer a fair rate at the time of proposal and therefore will not act as a disincentive to efficiency.

Comment: Both commenters expressed concern about OPM's plan to calculate MLR using one year of data, as compared to a three year average for the HHS calculation. The commenters were concerned about large FEHB plans having to manage between the two methodologies. One commenter mentioned that an annual MLR calculation would not allow FEHB plans to mitigate variation when carriers engage in activities that entail large one-time start up costs.

Response: Regarding the commenters concern about managing two methodologies, OPM feels applying an MLR calculation similar to the ACA required calculation, instead of the SSSG methodology, provides more consistency than there would have been without this regulatory change.

OPM must balance its goal of negotiating the best rate for FEHB payers every year with the concerns of FEHB carriers about managing variation. For example, OPM may consider the MLR for one or more previous years when calculating the current year's MLR. This allows OPM the flexibility to prevent carriers who have historically offered favorable rates from being overly penalized for an unusually low MLR in