

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 850

RIN 3206-AL34

#### Retirement Systems Modernization

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed rules to authorize alternative provisions for processing retirement and health and life insurance applications, notices, elections, and records under the agency's Retirement Systems Modernization (RSM) project. The RSM project is OPM's strategic e-Gov initiative to improve the quality and timeliness of services to employees and annuitants covered by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), as well as the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB) and Retired Federal Employees Health Benefits (RFEHB) Programs, by modernizing business processes and the technology that supports them. Certain regulatory provisions governing the processing of benefits under CSRS, FERS, FEGLI, FEHB and RFEHB are incompatible with the effort to modernize retirement and insurance applications and claims processing. Therefore, exceptions from these provisions need to be authorized.

**DATES:** Comments must be received on or before September 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** James Giuseppe, (202) 606-0299.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [combox@opm.gov](mailto:combox@opm.gov). Include the docket number and/or RIN number in the subject line of the message.

- *Fax:* (202) 606-0990.

- *Mail:* John Panagakos, Manager, Retirement Group, Office of Personnel Management, 1900 E Street, NW., Room 4351, Washington, DC 20415.

#### SUPPLEMENTARY INFORMATION:

#### Overview of Retirement Systems Modernization

Retirement Systems Modernization (RSM) is a strategic initiative of the Office of Personnel Management (OPM) to improve the quality and timeliness of services to individuals covered by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), as well as those covered by the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB) and Retired Federal Employees Health Benefits (RFEHB) Programs, by modernizing business processes and the technology that supports them. The RSM program will transform the retirement process, and health and life insurance elections, by devising more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

New Web-based tools will be available on demand for Federal employees to plan early for their retirement and for annuitants to make health and life insurance elections. System operators will have secure access to Federal employees' and annuitants' information in the system, allowing for enhanced retirement and post-retirement counseling. The automation of claims processing will be done more efficiently and consistently and will provide Federal employees and annuitants with access to their retirement and insurance information that was not previously available to them.

However, some current regulatory provisions, especially the procedures they prescribe, are based on outdated technology. Those provisions are suitable for a paper-based system that will eventually cease to exist, but which will continue to operate concurrently for some time with respect to at least some aspects of retirement and insurance processing for some individuals.

The nature of this initiative requires regulations to accommodate two somewhat unusual program needs. First, the regulations must allow for the differing requirements of two retirement processing programs operating simultaneously. Second, because the technology and procedures of the initiative are still in development and will continue to evolve even as the initiative becomes operational, the regulations cannot be specific on many subjects, but must be sufficiently flexible to enable the initiative to operate.

Accordingly, the premise underlying the regulations OPM is proposing to promulgate in a new part 850 of title 5, Code of Federal Regulations, to support the RSM initiative, is that current regulations governing CSRS, FERS, FEGLI, FEHB and RFEHB will not be changed at this time, but the provisions authorized by the new part 850 will supersede the existing CSRS, FERS, FEGLI, FEHB and RFEHB provisions for those portions of cases processed under the initiative. Where there is a difference, the provisions authorized by the new part 850 will apply to those portions of cases processed under the initiative.

#### Phased Implementation of RSM

Implementation of RSM will begin in February 2008. Retirement and insurance records of current employees and annuitants will be migrated into the new system in a series of waves. More information about the phased implementation of the RSM system will be posted at <http://www.opm.gov/rsm/index.asp> as it becomes available.

#### What RSM Means for Employees and Annuitants

As discussed earlier, employees and annuitants will have greater access to their retirement and insurance information under RSM, as well as access to web-based tools that will provide improved customer service and allow for enhanced retirement and insurance benefits counseling. Unless explicitly provided for in these regulations, there is no intention to make substantive changes in provisions governing eligibility for retirement or formulas for computing annuities. However, the initiative's greater ability to capture and use more detailed information will permit more precise and accurate calculation of some aspects

of annuities and insurance than the less precise calculations possible under existing procedures, as in the case of data elements that will now be available on a pay-period or daily basis rather than an annual basis. Accordingly, RSM will provide the most accurate computation possible.

#### Subpart A—General Provisions

Subpart A of the proposed part 850 includes general provisions governing the RSM initiative, including the purpose and scope of the initiative, definitions of terms used in the new part 850, a description of the applicability of its provisions, and authority for the Director of OPM to issue implementing directives prescribing more specific procedures for RSM processes. As noted earlier, the detailed procedures by which the system will operate will continue to evolve both as the February 2008 implementation date approaches and after that date. These procedures will be at a level of detail that makes them inappropriate for inclusion in the Code of Federal Regulations. Therefore, § 850.104 of the proposed regulations provides the OPM Director with authority to prescribe detailed procedures to implement the mechanical processes of RSM. The Director's authority under this section is intended to affect only regulations governing process-oriented requirements, such as requirements that applications, forms, or notices be in writing. Part 850 and the Director's implementing directives are not intended to alter any substantive rights of employees or annuitants. In addition, part 850 and the Director's implementing directives are not intended to supersede or alter any functions performed by a private insurance company or carrier with which OPM has entered into a contract, or with which OPM may enter into a contract in the future, under chapter 87 or 89 of title 5, United States Code, or any other statutory or regulatory provision.

#### Electronic Signatures

The Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Title XVII, requires Federal agencies to allow individuals or entities that deal with agencies the option to submit information or transact with the agency electronically, when practicable, and to maintain records electronically, when practicable. The Act specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are

in electronic form, and encourages Federal government use of a range of electronic signature alternatives. The Act also gives OMB the authority to issue procedures for the use and acceptance of electronic signatures by Federal agencies. OMB published final procedures and guidance for implementing the GPEA in OMB Memorandum M–00–10, 65 FR 25508 (May 2, 2000). OMB Memorandum M–00–10 states that an agency should perform an assessment of the sensitivity of a particular transaction and available electronic signature technologies before it implements electronic signature capabilities for the transaction. This assessment must include a risk analysis and a cost-benefit analysis concerning the use of a particular electronic signature technology for a transaction.

Subpart A includes provisions allowing electronic communications and electronic signatures to be accepted in lieu of currently-required paper documents and written signatures. Section 850.106 incorporates provisions of the GPEA concerning the acceptability of electronic signatures and descriptions of current electronic signature technology set out in OMB Memorandum M–00–10. However, the electronic retirement and insurance processing system developed by RSM will not have the capability to process all of the electronic signature technologies described in the regulations when the system begins to operate. Section 850.106(c) provides that the Director of OPM must issue directives under § 850.104 that identify the acceptable methods of effecting electronic signatures, from among the electronic signature technologies that the electronic retirement and insurance processing system will be capable of processing, for particular electronic communications. For example, to permit an employee to apply for retirement through the submission of an electronic retirement application on an Internet Web site accessed with a personal identification number or password, the Director would have to issue an implementing directive allowing an electronic retirement application to be submitted by this method. Through the issuance of implementing directives prescribed under § 850.104, the Director could authorize the electronic retirement and insurance processing system to accept various forms of electronic signatures including, signatures created by personal identification numbers (PINs) or passwords, smart cards, digitized signatures, biometrics (*e.g.*, fingerprints, retinal patterns, voice recognition), or

cryptographic methods such as shared symmetric key cryptography, or public/private key (asymmetric) cryptography, also known as digital signatures. These are simply examples of electronic signatures that the Director of OPM would have the discretion to accept, but would not be required to accept, in prescribing implementing directives.

Proposed § 850.103 provides definitions for these and other terms. For example, “digitized signature” is defined as a graphic image of a handwritten signature containing unique biometric data associated with the creation of each stroke of the signature. A digitized signature can be verified by comparing it with the characteristics and biometric data of a known or exemplar signature image.

“Personal identification number” (PIN) or “password” is defined as a non-cryptographic method of authenticating the identity of a user of an electronic application. To authenticate a user's identity with this method, a user accessing an electronic application is asked to enter his or her name, or other user identifier, and a password or PIN. The password or PIN is known both to the user and to the electronic system, but to no one else. The system checks the individual's password or PIN against data in a database to ensure correctness and thereby authenticates the user.

“Public/private key (asymmetric) cryptography” is a method of creating a unique mark, known as the digital signature, on an electronic document or file. It uses two computer-generated, mathematically-linked keys: a private signing key known only to the user and the electronic system and a public key used to validate the fact that the digital signature was generated with the associated private key.

“Shared symmetric key cryptography” is a method of authentication in which a single (private) key, known only to the user and the recipient of the electronic document, is used to sign and verify an electronic document.

“Smart card” is defined as a plastic card, resembling a credit card, containing an embedded integrated circuit or “chip” that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that can also be embedded on the same card. Information from the card's chip is provided to a computer, which can accept the card only when the user also enters a PIN, password, or biometric identifier recognized by the card.

The implementing directives prescribed by the Director under § 850.104 also could specify how a

signature may be notarized electronically, where there is a requirement for a notarized signature. Section 850.106(a)(4), consistent with section 101(g) of the Electronic Signatures in Global and National Commerce Act of 2000 (Pub. L. 106-229), provides that the Director could accept an electronic signature as properly notarized if the signature is attached to or logically associated with all other information and records required to be included by the applicable statute or regulation.

#### **Subpart B—Applications for Benefits; Elections**

Subpart B of the proposed regulations deals with applications and notices for CSRS, FERS, FEGLI, FEHB and RFEHB benefits under the RSM initiative and elections associated with the processing of those benefits. It allows applications, forms, notices, elections, and other related submissions, which otherwise would be required to be made in writing, to be submitted in whatever form the Director of OPM prescribes, including electronically. It also allows all such submissions to be made to OPM through the RSM electronic processing system, regardless of any other requirement for certain individuals to submit certain documents to their employing agencies or OPM. Subpart B also stipulates that, for cases processed under the RSM system, data provided to the RSM electronic processing system under subpart C will be the basis on which claims for CSRS, and FERS retirement benefits will be adjudicated, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants. Subpart B provides a deadline of 35 days after the date of the notice to the retiring employee of the amount of his or her annuity within which he or she can change a survivor election. This deadline replaces provisions in current regulations that link the timeframe for changing survivor elections to the date of the "first regular monthly payment" or "final adjudication." Subpart B also provides that any deadline for making any other election that is described in reference to the first regular monthly payment or the date of final adjudication is deemed to be 35 days after the date of the notice to the retiring employee of the amount of annuity to which he or she is entitled. This provision is necessary because the terms "first regular monthly payment" and "final adjudication" can no longer be applied in the way they used to be applied in a paper-based environment; therefore, they will lose their meaning in the RSM context.

#### **Subpart C—Records**

Subpart C describes electronic records that are acceptable for processing by the RSM system. These include electronic data submitted through the Enterprise Human Resources Integration (EHRI) system and data from electronic Official Personnel Folders (e-OPFs), as well as paper documents that have been converted to digital form by image scanning or other means. Paper documents that have not been converted to electronic or digital form will continue to be acceptable records for processing under RSM. Federal agencies and other entities employing individuals covered by CSRS or FERS continue to be responsible for the initiation and proper maintenance of employment, retirement, and insurance records, as well as for correcting errors in data provided to OPM.

#### **Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices**

Subpart D concerns the submission of notices of coverage under the CSRS and FERS special retirement provisions for law enforcement officers, firefighters, and nuclear materials couriers. Such notices of coverage must be submitted electronically through EHRI to the RSM processing system. The notice must include the position description number for the position for which special retirement coverage has been approved.

#### **E.O. 12866, Regulatory Review**

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

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal employees, former Federal employees, Members of Congress, annuitants, survivors, and applicants under the Civil Service Retirement System and the Federal Employees' Retirement System whose retirement and insurance records are maintained by the new retirement processing system created by OPM's Retirement Systems Modernization (RSM) initiative.

#### **List of Subjects in 5 CFR Part 850**

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers,

Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

Accordingly, the Office of Personnel Management is proposing to amend title 5, Code of Federal Regulations, by establishing a new part 850 as follows:

### **PART 850—RETIREMENT SYSTEMS MODERNIZATION**

#### **Subpart A—General Provisions**

Sec.	
850.101	Purpose and scope.
850.102	Applicability.
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#### **Subpart B—Applications for Benefits; Elections**

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850.302	Record maintenance.
850.303	Return of personal documents.

#### **Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices**

850.401	Electronic notice of coverage determination.
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**Authority:** 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; section 9 of Pub. L. 86-724, 74 Stat. 849, 851-52 (September 8, 1960) as amended by section 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

#### **Subpart A—General Provisions**

##### **§ 850.101 Purpose and scope.**

(a) The purpose of this part is to enable changes needed for implementation of the new retirement and insurance processing system created by the Office of Personnel Management (OPM)'s Retirement Systems Modernization (RSM) initiative. RSM is OPM's strategic initiative to improve the quality and timeliness of services to employees and annuitants covered by the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS) by using contemporary, automated business processes and supporting technology. The RSM program is designed to transform the retirement process, as well as the processing of annuitant insurance elections of FEGLI, FEHB and RFEHB coverage, by employing more efficient and effective business systems to

respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB and RFEHB benefits processed by or at the direction of OPM under the RSM initiative. Those regulatory provisions that would otherwise apply were established for a paper-based retirement and insurance benefits processing system that will eventually be phased out but which will continue to operate concurrently with RSM for some time, until RSM is fully implemented. During the phased transition to RSM processing, certain regulations that were not designed with RSM in mind, and which are incompatible with RSM business processes, must be set aside with respect to aspects of retirement and insurance processing accomplished under RSM. The regulations set forth in this part make the transition to RSM processes possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using paper records.

#### § 850.102 Applicability.

(a) The provisions of parts 831, 835, 837 through 839, 841 through 847, 870, 890, and 891 of this chapter remain in effect, as applicable, except to the extent that they are inconsistent with one or more provisions of this part or implementing directives prescribed by the Director under § 850.104 of this part.

(b) The provisions of this part do not supersede or alter any functions performed by a private insurance company or carrier with which OPM has entered into a contract, or with which OPM may enter into a contract in the future, under chapter 87 or 89 of title 5, United States Code, or under any other provision of law or regulation.

#### § 850.103 Definitions.

In this part—

*Biometrics* refers to the technology that converts a unique characteristic of an individual into a digital form, which is then interpreted by a computer and compared with a digital exemplar copy of the characteristic stored in the computer. Among the unique characteristics of an individual that can be converted into a digital form are

voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

*Cryptographic control method* means an approach to authenticating identity or the authenticity of an electronic document through the use of a cipher (*i.e.*, a pair of algorithms) which performs encryption and decryption.

*CSRS* means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

*Digital signature* is an electronic signature generated by means of an algorithm that ensures that the identity of the signatory and the integrity of the data can be verified. A value, referred to as the “private key,” is generated to produce the signature, and another value, known as the “public key,” which is linked to, but not the same as, the private key, is used to verify the signature.

*Digitized signature* means a graphical image of a handwritten signature, usually created using a special computer input device, such as a digital pen and pad, which contains unique biometric data associated with the creation of each stroke of the signature, such as duration of stroke or pen pressure. A digitized signature can be verified by a comparison with the characteristics and biometric data of a known or exemplar signature image.

*Director* means the Director of the Office of Personnel Management.

*Electronic communication* refers to any information conveyed through electronic means and includes electronic forms, applications, elections, and requests submitted by e-mail or any other electronic message.

*Electronic Official Personnel Record Folder (e-OPF)* means the electronic Official Personnel Folder application that will replace the current paper personnel folder across the Government.

*Electronic retirement and insurance processing system* means the new retirement and insurance processing system created by OPM’s Retirement Systems Modernization (RSM) initiative.

*Employee* means an individual, other than a Member of Congress, who is covered by CSRS or FERS.

*Enterprise Human Resources Integration (EHRI)* means the comprehensive electronic personnel record-keeping and analysis system that supports human resources management across the Federal Government.

*FEGLI* means the Federal Employees’ Group Life Insurance Program established under chapter 87 of title 5, United States Code.

*FEHB* means the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

*FERS* means the Federal Employees’ Retirement System established under chapter 84 of title 5, United States Code.

*Member* means a Member of Congress defined by section 2106 of title 5, United States Code, who is covered by CSRS or FERS.

*Non-cryptographic method* is an approach to authenticating identity that relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application.

*Personal identification number (PIN) or password* means a non-cryptographic method of authenticating the identity of a user of an electronic application, involving the use of an identifier known only to the user and to the electronic system, which checks the identifier against data in a database to authenticate the user’s identity.

*Public/private key (asymmetric) cryptography* is a method of creating a unique mark, known as a digital signature, on an electronic document or file. This method involves the use of two computer-generated, mathematically-linked keys: a private signing key that is kept private and a public validation key that is available to the public.

*RFEHB* means the Retired Federal Employees Health Benefits Program established under Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended.

*Shared service centers* are processing centers delivering a broad array of administrative services to multiple agencies.

*Shared symmetric key cryptography* means a method of authentication in which a single key is used to sign and verify an electronic document. The single key (also known as a “private key”) is known only by the user and the recipient or recipients of the electronic document.

*Smart card* means a plastic card, typically the size of a credit card, containing an embedded integrated circuit or “chip” that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that may be embedded on the same card.

#### § 850.104 Implementing directives.

The Director must prescribe, in the form he or she deems appropriate, such detailed procedures as the Director determines to be necessary to carry out the purpose of this part.

**§ 850.105 Agency responsibility.**

Agencies employing individuals whose retirement records or processing are affected by this part are responsible for counseling those individuals regarding their rights and benefits under CSRS, FERS, FEGLI, FEHB, or RFEHB.

**§ 850.106 Electronic signatures.**

(a) Subject to any provisions prescribed by the Director under § 850.104—

(1) An electronic communication may be deemed to satisfy any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB for a written election, notice, application, consent, request, or specific form format;

(2) An electronic signature of an electronic communication may be deemed to satisfy any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that an individual submit a signed writing to OPM;

(3) An electronic signature of a witness to an electronic signature may be deemed to satisfy any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB for a signature to be witnessed; and

(4) Any statutory or regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that a signature be notarized may be satisfied if the electronic signature of the person authorized to sign is attached to or logically associated with all other information and records required to be included by the applicable statute or regulation.

(b) For purposes of this section, an electronic signature is a method of signing an electronic communication, including an application, claim, or notice, designation of beneficiary, or assignment that—

(1) Identifies and authenticates a particular person as the source of the electronic communication; and

(2) Indicates such person's approval of the information contained in the electronic communication.

(c) The Director will issue directives under § 850.104 of this part that identify the acceptable methods of effecting electronic signatures for particular purposes under this part. Acceptable methods of creating an electronic signature may include—

(1) Non-cryptographic methods, including—

(i) Personal Identification Number (PIN) or password;

(ii) Smart card;

(iii) Digitized signature; or

(iv) Biometrics, such as fingerprints, retinal patterns, and voice recognition;

(2) Cryptographic control methods, including—

(i) Shared symmetric key cryptography;

(ii) Public/private key (asymmetric) cryptography, also known as digital signatures;

(3) Any combination of methods described in paragraphs (1) and (2); or

(4) Such other means as the Director may find appropriate.

**Subpart B—Applications for Benefits; Elections****§ 850.201 Applications for benefits.**

(a)(1) Applications and related submissions that otherwise would be required by this chapter to be made in writing may instead be submitted in such form as the Director prescribes under § 850.104 of this part.

(2) Subject to any directives prescribed by the Director under § 850.104 of this part, applications and related submissions that are otherwise required to be made to an individual's employing agency (other than by statute) may instead be submitted to the electronic retirement and insurance processing system or to OPM.

(b) Data provided under subpart C are the basis for adjudicating claims for CSRS and FERS retirement benefits, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants, under this part.

(c) For the purposes of this subpart, "OPM notice" means the notice informing the retiree or other individual of the annuity computation rate and of the elections made by the retiree or other such individual eligible to make such an election and informing him or her of the time limit under § 850.202 or § 850.203 for any election, revocation or change of election.

**§ 850.202 Survivor elections.**

(a) A survivor election under subsection (j) or (k) of section 8339, or under section 8416, 8417, or 8420 of title 5, United States Code, which is otherwise required to be in writing may be effected in such form as the Director prescribes under § 850.104.

(b)(1) Except as provided in §§ 831.622(b)(1), 831.631, 831.632, 842.610(b)(1), 842.611, and 842.612, an individual making a survivor election at the time of retirement may not revoke or change that election later than 35 days after the date of the OPM notice to the individual of the amount of annuity to which he or she is entitled.

(2) A retiree may change a survivor election under § 831.622(b)(1) or § 841.610(b)(1) no later than 18 months after the commencing date of the annuity to which he or she is entitled.

**§ 850.203 Other elections.**

(a) Any other election may be effected in such form as the Director prescribes under § 850.104. Such elections include but are not limited to—

(1) Elections of coverage under CSRS, FERS, FEGLI, FEHB or RFEHB by individuals entitled to elect such coverage;

(2) Applications for service credit and applications to make deposit; and

(3) Elections regarding the withholding of State income tax from annuity payments.

(b) Any election, which, if it were not processed under this part, would have a deadline described in reference to the first regular monthly payment or the date of final adjudication, may not be made later than 35 days after the date of the OPM notice to the individual concerned of the amount of annuity to which he or she is entitled.

**Subpart C—Records****§ 850.301 Electronic records; other acceptable records.**

(a) Acceptable electronic records for processing by the electronic retirement and insurance processing system include—

(1) Electronic employee data submitted by an agency or other entity through EHRI and stored within the new retirement and insurance processing system;

(2) Electronic Official Personnel Folder (e-OPF) data; and

(3) Documents, including hardcopy versions of the Individual Retirement Record (SF 2806 or SF 3100), or data obtained from such documents, that are converted to an electronic or digital form by means of image scanning or other forms of electronic or digital conversion.

(b) Documents that are not converted to an electronic or digital form will continue to be acceptable records for processing by the retirement and insurance processing system.

(c) OPM is not required to retain documents after they have been converted to electronic records.

**§ 850.302 Record maintenance.**

(a) The retirement and insurance processing system does not affect the responsibilities of every Federal department, agency, corporation or branch, and the District of Columbia government (included collectively in this part in the term department or agency) having employees or Members of Congress subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for the initiation and maintenance of records, evidence,

or other information described in this title.

(b) Agencies are responsible for correcting errors in data provided to OPM under § 850.301.

#### § 850.303 Return of personal documents.

An individual who submits personal documents to OPM in support of a claim for retirement or insurance benefits may have such documents returned to the individual if he or she requests the return of the documents when submitting the documents. If OPM receives a request for return of such documents at a later time, OPM may provide the individual with a copy of the document that is derived from electronic records.

#### Subpart D—Submission of Law Enforcement, Firefighter, and Nuclear Materials Courier Retirement Coverage Notices

##### § 850.401 Electronic notice of coverage determination.

(a) An agency or other entity that submits electronic employee records directly or through a shared service center to the electronic retirement and insurance processing system must electronically submit the notice of law enforcement officer, firefighter, or nuclear materials retirement coverage required by § 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this title through EHRI to the electronic retirement and insurance processing system.

(b) The electronic notice required by paragraph (a) must include the position description number of the position for which law enforcement officer, firefighter, or nuclear materials courier retirement coverage has been approved.

(c) An agency or other entity submitting an electronic notice required by paragraph (a) must electronically submit the coverage determination and background file required to be maintained by § 831.811(b), 831.911(b), 842.808(b), or 842.910(b) to the electronic retirement and insurance processing system for each position included in the notice.

[FR Doc. E7-16256 Filed 8-16-07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS-FV-07-0089; FV07-984-1 PR]

#### Walnuts Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Walnut Marketing Board (Board) for the 2007-08 and subsequent fiscal periods from \$0.0101 to \$0.0122 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 4, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Shereen Marino, Marketing Specialist, California Marketing Field Office, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Shereen.Marino@usda.gov](mailto:Shereen.Marino@usda.gov), or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence

Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2007-08 and subsequent fiscal periods from \$0.0101 to \$0.0122 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to