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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 846

RIN 3206-AG96

### Federal Employees Retirement System—Open Enrollment Act Implementation

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Retirement System Open Enrollment Act of 1997. These regulations provide information about who may make open-enrollment-period elections and the procedures that employees must follow to elect Federal Employees Retirement System (FERS) coverage during the 1998 open enrollment period, and that agencies must follow in advising employees about such elections of FERS coverage and in processing such elections of FERS coverage.

**DATES:** Interim rules effective: June 18, 1998; comments must be received on or before August 17, 1998.

**ADDRESSES:** Send comments to Mary Ellen Wilson, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** Section 642 of the Treasury and General Government Appropriations Act, 1998, Pub. L. 105-61, approved October 10, 1997, as amended by section 348 of the Department of Transportation and

Related Agencies Appropriations Act, 1998, Pub. L. 105-66, approved October 27, 1997, is entitled the Federal Employees Retirement System (FERS) Open Enrollment Act of 1997. It requires OPM to issue regulations under which individuals who are employed by the Federal Government and covered by the Civil Service Retirement System (CSRS) as of January 1, 1998, may elect to become covered by FERS.

Subsection (c) of section 642 prescribes certain requirements for the regulations. Elections must be made during the period beginning on July 1, 1998, and ending on December 31, 1998. OPM must provide for notice of the right to make the election including information on a comparison of the benefits an individual would receive under CSRS or FERS. Treatment of such an election must be "similar to the applicable provisions of title III of the Federal Employees Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599 *et seq.*)." These regulations implement the FERS Open Enrollment Act of 1997 by clarifying who is eligible to make an election under the Act and by establishing the procedures for making such an election. They assign to employing agencies the obligation to provide statutorily-required notice and, if requested, additional information, including a comparison of benefits, to employees about their election rights. How the employing agencies provide that notice is generally up to them. In addition, the regulations provide for belated elections as a safety valve for instances in which the agency fails to provide the statutorily-required notice. If an agency denies a request to make a belated election, the agency is responsible for defending the denial, including the adequacy of its notice, before the Merit Systems Protection Board (MSPB).

Generally, an election of FERS coverage is effective on the first day of the pay period beginning after the date the election (and, in cases affected by the former spouse consent requirement, the required supporting documentation) is received by the employing office. This is required under section 301(c) of the FERS Act and is reflected in section 846.703 of these regulations. The regulation also provides that an election cannot be effective before the beginning of the open enrollment period on July 1,

1998. For employees whose pay period is monthly and thus begins on July 1, the election is effective on August 1, the first day of the next pay period.

An election to be covered by FERS can be revoked anytime before it has become effective. Thus, an employee who submits an election to be covered by FERS prior to July 1, 1998, may revoke an election anytime before the beginning of the first pay period beginning after July 1, 1998.

An employee who does not want to elect FERS coverage does not need to file a completed election form. Although the SF 3109 does provide a space for an affirmative election not to be covered by FERS, such an election has no legal effect. To emphasize this, the regulations specifically provide that an election not to become covered by FERS may be revoked at any time during the open enrollment period by filing a new election. Agencies have no obligation to maintain records of elections not to become covered by FERS.

The Act provides that an individual must have been employed by the Federal Government on January 1, 1998, to be eligible to make an open-enrollment election. Because this statutory language is similar to the language concerning who was eligible to participate in the 1987 open enrollment period, we have interpreted the phrase "employed by the Federal Government" to have the same meaning as it was given in the 1987 open enrollment period. Thus, anyone who (1) qualifies as an employee under section 2105 of title 5, United States Code, (2) is eligible for social security coverage, and (3) is not excluded from FERS coverage may be eligible to make an election as provided in section 846.711 of these regulations. This includes employees serving under appointments generally excluded from CSRS coverage but not excluded from FERS coverage, such as term appointments, as well as some individuals who are treated as Federal employees for retirement purposes, such as certain employees of the District of Columbia Courts. It also includes employees serving under appointments generally excluded under CSRS but who have CSRS coverage under section 831.201(b)(1) of Title 5, Code of Federal Regulations. Section 831.201(b)(1) provides that an employee serving in a position covered by CSRS (other than an alien whose duty station is in a foreign

country) retains CSRS coverage upon moving to employment in a position in an excluded category if the move occurs without a break in service (or after a separation of 3 days or less).

By statute, four groups of individuals who may be covered by CSRS are not eligible to participate in the open enrollment opportunity. These statutory exclusions are reflected in 846.712 and 846.713. Section 846.712(a) excludes individuals employed by the government of the District of Columbia except for certain groups of employees who are permitted to be covered by FERS because by statute they are treated as Federal employees for retirement purposes. The National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105-33, 111 Stat. 251, allows FERS coverage for non-judicial employees of the District of Columbia Courts and certain employees of the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee who meet the requirements of section 831.201(g) of Title 5, Code of Federal Regulations. The District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104-8, 109 Stat. 97, as amended, allows FERS coverage for employees of the District of Columbia Financial Responsibility and Management Assistance Authority who may make an election under section 831.204 of Title 5, Code of Federal Regulations.

Section 846.712(b) excludes Members of Congress. Members were eligible to participate in the 1987 open enrollment period; however, section 348 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105-66, approved October 27, 1997, expressly excludes Members of Congress from the class of individuals who can make an open-enrollment election.

Section 846.712(c) excludes individuals who are ineligible for social security coverage. The definition of "employee" for FERS in section 8401(11) of title 5, United States Code, permits only individuals who are eligible for social security coverage to elect FERS coverage.

Section 846.713 excludes individuals who are subject to the former spouse consent requirement under section 301(d) of the FERS Act unless they obtain the former spouse's consent or qualify for a waiver of the consent requirement. The methods of proving consent or qualifying for a waiver are

discussed in connection with section 846.722, *infra*.

Section 846.721 establishes the actions that an eligible individual must take to elect FERS coverage. Elections must be documented by a completed SF 3109, the FERS Election of Coverage form, filed with the employing office. However, any signed writing timely filed with the employing office may be used as an election to establish the date of the election, and thus the effective date of FERS coverage, as long as the employing agency subsequently receives a completed SF 3109 to confirm such election. For example, if an employee on leave without pay or whose duty station is at a remote worksite, informs the agency by letter that he or she elects FERS coverage, the letter constitutes a valid election when confirmed with a completed SF 3109. The agency should have the employee complete an SF 3109 and should process the transfer of coverage effective at the beginning of the pay period after it received the letter.

Generally, the right to elect FERS may only be exercised personally by the employee. Section 846.721(b) provides the only exception. It allows the survivor of a deceased employee to sign and file the completed SF 3109 on behalf of a deceased employee as long as the employee had made an election, as described in section 846.721(b).

Section 301(d) of the FERS Act prohibits an election by an employee whose former spouse has filed with OPM certain court orders affecting the employee's retirement benefits. This restriction applied to elections during the 1987 open enrollment period and currently applies to all elections upon reemployment. We believe it would be consistent to apply such a restriction to elections during this open enrollment period. Accordingly, section 846.722 provides that the existing procedures applicable to the former spouse consent requirement generally apply to elections during the open enrollment period. In addition, the regulations provide for automatic approval of an extension of the time limit for election of FERS coverage until June 30, 1999, upon filing (before January 1, 1999) with the agency of a properly completed SF 3111, Request for Waiver, Extension or Search, requesting an extension.

Section 846.723 implements the requirement in section 642(c)(2) of the Act that OPM issue regulations to provide "notice and information to individuals who may make such an election, including information on a comparison of benefits an individual would receive from coverage under [CSRS] or [FERS]." Since comparisons

of benefits are always unique to an individual employee, notice will be more effective if made by employing agencies directly. Accordingly, the regulations delegate to employing agencies responsibility to provide the required notice and information. Agencies may determine the exact form of the notice. See discussion of section 846.724(a) on belated elections and agency responsibility for defending the adequacy of its notice in any case in which it denies a request to make a belated election.

Unlike the 1987 open season, we are not requiring that agencies distribute paper copies of the FERS Transfer Handbook to each employee, but each eligible employee who does not receive a paper copy must have ready access to the Handbook. The Handbook is accessible on the OPM website at [www.opm.gov/fers\\_election](http://www.opm.gov/fers_election). The Handbook also will be distributed to agencies on a CD-ROM that mirrors the website.

The Handbook will be the primary tool employees will use in making their decisions. For most employees, reading the comparison of benefit provisions under the two systems and some of the scenarios contained in the Handbook will provide the information they need to make a decision.

A transfer model is available on the FERS Election Opportunities page ([www.opm.gov/fers\\_election](http://www.opm.gov/fers_election)) of OPM's website and will be on the CD-ROM. This is a computer model that will allow employees to estimate their projected benefits under CSRS and FERS based on assumptions unique to each employee. As with the Handbook, it should be made available for use by all eligible employees. The revised computer model is a user-friendly, interactive, Windows®-based version that employees are able to use themselves to compare and contrast benefits under both systems. If the employing office cannot make the transfer model available to some employees, the agency is expected to make available an equivalent CSRS/FERS benefits estimate upon request.

While counseling employees who request it and assisting them in understanding how the systems affect their individual circumstances, agencies should emphasize that the final decision on which system the employee chooses is a personal one.

An agency decision that an employee is not eligible to elect FERS coverage or an agency's refusal to accept a belated election must be in writing and must notify the employee of the right to appeal the decision to MSPB and the 30-day time limit applicable to such

appeals. The employing agency is also responsible for defending such a coverage decision at MSPB. Each agency should keep such documentation that it considers appropriate for that purpose.

Since the statute expressly requires notice and, if requested, other information concerning the election including a comparison of benefits be provided to employees, the failure to provide these materials is a basis for tolling the time limit for making the election. *See e.g., Davies v. OPM*, 5 M.S.P.R. 199 (1981). Section 846.724 empowers agencies (subject to review by MSPB under section 846.725) to determine on a case-by-case basis whether they failed to provide sufficient information to justify acceptance of a belated election. The employing office may accept a belated election of FERS coverage without time limit if the employing office determines that the agency did not provide the notice required under section 846.723 in a timely manner, the agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner, or the employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit. A belated election of FERS coverage is effective on the first day of the pay period beginning after the employing office receives the completed SF 3109, the FERS Election of Coverage form. Neither agencies nor OPM has any statutory authority to approve a retroactive effective date for belated elections of FERS coverage.

Section 846.724 also continues the current rules concerning correction of administrative errors. Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with section 841.505 of Title 5, Code of Federal Regulations.

Section 846.725 establishes the procedures for appeal of decisions affecting elections of coverage under FERS. A person whose rights or interests concerning an election of FERS coverage are affected by the agency's final decision may request MSPB to review the decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of Title 5, Code of Federal Regulations.

Section 846.726 specifically delegates to agencies authority to act as OPM's agent for receipt of employee communications relating to elections of FERS coverage (i.e., any documents that employees are required by these regulations to file with OPM). Such documents are deemed received by OPM on the date that the employing

office receives them. Such delegations are authorized under section 1104 of title 5, United States Code.

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and 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 so that the regulation can be implemented in time to meet the statutory requirements of the Federal Employees Retirement System Open Enrollment Act of 1997. That statute requires the OPM to issue regulations under which individuals who are employed by the Federal Government and are covered by CSRS as of January 1, 1998 may elect to become covered by FERS. Such elections must be made between July 1, 1998 and December 31, 1998. This rule is being made effective in less than 30 days in order to establish timely election procedures and allow the regulation to be of maximum effectiveness and assistance for Federal agencies and employees considering their election options.

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

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 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 only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

#### **List of Subjects in 5 CFR Part 846**

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM amends 5 CFR part 846 as follows:

#### **PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTIONS OF COVERAGE**

1. The heading of part 846 is revised to read as set forth above.

1a. The authority citation for part 846 is revised to read as follows:

**Authority:** 5 U.S.C. 8347(a) and 8461(g) and Title III of Pub. L. 99-335, 100 Stat. 517;

§ 846.201(b) also issued under 5 U.S.C. 7701(b)(2) and section 153 of Pub. L. 104-134, 110 Stat. 1321; § 846.201(d) also issued under section 11246(b) of Pub. L. 105-33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99-335, 100 Stat. 517; § 846.726 also issued under 5 U.S.C. 1104; subpart G also issued under section 642 of Pub. L. 105-61, 111 Stat. 1272.

2. Subpart G is added to read as follows:

#### **Subpart G—1998 Open Enrollment Elections**

Sec.

- 846.701 Purpose and scope.
- 846.702 Definitions.
- 846.703 Effective date of FERS coverage.
- 846.704 Irrevocability of an election of FERS coverage.

#### **Who May Elect**

- 846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.
- 846.712 Statutory exclusions.
- 846.713 Former spouse consent requirement.

#### **Election Procedures**

- 846.721 Electing FERS coverage.
- 846.722 Former spouse's consent to an election of FERS coverage.
- 846.723 Agency responsibilities.
- 846.724 Belated elections and correction of administrative errors.
- 846.725 Appeal to the Merit Systems Protection Board.
- 846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.

#### **Subpart G—1998 Open Enrollment Elections**

##### **§ 846.701 Purpose and scope.**

This subpart contains OPM's regulations applicable to elections of FERS coverage during the 1998 open enrollment period, including—

- (a) The requirements that an individual must satisfy to be eligible to make an election; and
- (b) The procedures that—
  - (1) Employees must follow to make an election;
  - (2) Agencies must follow in advising employees about making an election and in processing employees' elections; and
  - (3) OPM will follow in cases subject to the former spouse consent requirement.

##### **§ 846.702 Definitions.**

In this subpart—

*Election* means an election of FERS coverage during the 1998 open enrollment period.

*Former spouse consent requirement* means the condition that must be satisfied under section 301(d) of the FERS Act for an employee with a former spouse to be eligible to elect FERS coverage.

*Qualifying court order* means a court order acceptable for processing as defined in § 838.103 of this chapter or a *qualifying court order* as defined in § 838.1003 of this chapter subject to the following conditions:

(1) If OPM has not received (as explained in § 838.131 of this chapter) a copy of the court order and identifying information required under § 838.221(b)(3), § 838.421(b)(3), § 838.721(b)(1)(iii), or § 838.1005(b)(3) of this chapter prior to the date on which the employing office receives the election to be covered by FERS, the court order is not a *qualifying court order*.

(2) If the former spouse loses entitlement to all CSRS benefits under the court order, the court order ceases to be a *qualifying court order*.

*Social security coverage* means coverage under the Old Age, Survivors, and Disability Insurance program under the Social Security Act.

*1998 open enrollment period* means July 1, 1998, through December 31, 1998.

**§ 846.703 Effective date of FERS coverage.**

An election under this subpart is effective on the later of—

(a) The first day of the pay period beginning after the date the election and any required supporting documentation is received by the employing office; or

(b) The first day of the pay period beginning after July 1, 1998.

**§ 846.704 Irrevocability of an election of FERS coverage.**

(a) An election to be covered by FERS becomes irrevocable on the date it becomes effective.

(b) If, during the 1998 open enrollment period, an employee files an election on an SF 3109 to remain covered by CSRS, the employee may revoke such an election by filing another election during the 1998 open enrollment period.

**Who May Elect**

**§ 846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.**

An employee who is not covered by FERS, and who was an employee on January 1, 1998, and who is not otherwise ineligible for FERS coverage (under subpart A of part 842 of this chapter or § 846.722) may elect FERS coverage during the 1998 open enrollment period.

**§ 846.712 Statutory exclusions.**

(a) *DC government employees.* An individual employed by the government of the District of Columbia is not eligible to make an election, except—

(1) Non-judicial employees of the District of Columbia Courts, District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105-33, 111 Stat. 251, who meet the conditions of § 831.201(g)(2), (3), and (4) of this chapter; and

(2) Employees of the District of Columbia Financial Responsibility and Management Assistance Authority under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104-8, 109 Stat. 97, as amended, who elected CSRS under § 831.201(g)(5) of this chapter.

(b) *Members of Congress.* A Member (as defined in section 2106 of title 5, United States Code) is not eligible to make an election.

(c) *Persons without social security eligibility.* An individual is not eligible to make an election if that individual is not eligible for social security coverage.

**§ 846.713 Former spouse consent requirement.**

An election of FERS coverage cannot become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under part 838 of this chapter.

**Election Procedures**

**§ 846.721 Electing FERS coverage.**

(a) To elect FERS coverage, an employee must submit a completed FERS Election of Coverage form (SF 3109) and any additional documentation that may be required under § 846.722 (relating to the former spouse consent requirement) to the employing office no later than the close of business on December 31, 1998.

(b) Any writing signed by the employee and filed with the employing office may be treated as an election for the purpose of establishing the date of the election of FERS coverage if the employee intends that document to be an election, but the employee (or, if the employee dies after filing the election but before completing the SF 3109, the survivor) must submit a completed SF 3109 to confirm any such election.

**§ 846.722 Former spouse's consent to an election of FERS coverage.**

(a) *Employee actions.* (1) If the employee is subject to a qualifying court order, the employee must submit to the employing office a completed—

(i) SF 3110, Former Spouse's Consent to FERS Election, to document the former spouse's consent to the FERS coverage; or

(ii) SF 3111, Request for Waiver, Extension, or Search, to request a waiver of the former spouse consent requirement or to request an extension of the time limit for obtaining a former spouse's consent or amendment of the court order.

(2) If the employee states on the SF 3109, the FERS Election of Coverage form, that he or she does not know whether he or she is subject to a qualifying court order, the employee must submit to the employing office a completed SF 3111, Request for Waiver, Extension, or Search, to request OPM to determine whether it has a qualifying court order relating to the employee.

(b) *OPM actions—(1) Waiver of former spouse consent requirement—(i) Grounds for waiver.* OPM's authority to approve a waiver of the former spouse consent requirement is limited to cases in which the former spouse's whereabouts cannot be determined or exceptional circumstances make requiring the former spouse's consent inappropriate.

(ii) *Whereabouts cannot be determined.* OPM will waive the former spouse consent requirement upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(A) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or  
(B)(1) Affidavits by the employee and two other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the spouse; and

(2) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(iii) *Exceptional circumstances.* OPM will waive the former spouse consent requirement based on exceptional circumstances if the employee presents a judicial determination finding that—

(A) The case before the court involves a Federal employee who is in the process of electing FERS coverage and the former spouse of that employee;

(B) The former spouse has been given notice and an opportunity to be heard concerning this proceeding;

(C) The court has considered sections 301 and 302 of the FERS Act, Pub. L. 99-335, 100 Stat. 517, and this section as they relate to waiver of the former spouse consent requirement for an employee with a former spouse to elect FERS coverage; and

(D) The court finds that exceptional circumstances exist justifying waiver of the former spouse's consent.

(iv) *Approval of a waiver.* If OPM grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

(2) *Extension of the time limit to obtain a former spouse's consent—(i) First request.* If an employee who is ineligible to elect FERS coverage solely because of a qualifying court order files, prior to January 1, 1999, a completed SF 3111, Request for Waiver, Extension or Search, requesting an extension of the time limit to seek an amendment of a qualifying court order, OPM is deemed to have approved the extension through June 30, 1999.

(ii) *Second request.* OPM will grant one extension of the time limit to seek an amendment of a qualifying court order to an individual who has been granted an extension under paragraph (b)(2)(i) of this section if the individual—

(A) Files an application for the extension (SF 3109) with the employing office before July 1, 1999;

(B) Has initiated legal proceedings to secure the modification of the qualifying court order on file at OPM to satisfy the former spouse consent requirement;

(C) Demonstrates to OPM's satisfaction that the individual has exercised due diligence in seeking to obtain the modification; and

(D) If seeking an extension beyond December 31, 1999, demonstrates to OPM's satisfaction that a longer extension is necessary.

(iii) *Expiration date of a second extension.* An approved extension under paragraph (b)(2)(ii) of this section expires on December 31, 1999, unless OPM's decision letter states a later expiration date.

(3) *Search for a qualifying court order.*

(i) When an employing office notifies OPM that it has received an employee's request for a determination of whether OPM has a qualifying court order on file, OPM will determine whether it has such an order.

(ii) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the employing office that it has no qualifying court order completes the employee's election of FERS coverage and the election becomes effective at the beginning of the first pay

period after the employing office receives OPM's notification.

(iii) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing office that it has a qualifying court order and that an extension until June 30, 1999, has been granted.

#### § 846.723 Agency responsibilities.

(a) The employing office must determine whether the employee is eligible to elect FERS coverage.

(b)(1) As close as practicable to the beginning of the open enrollment period, the employing office must provide each employee eligible to elect FERS coverage with notice of that employee's right to make an election.

(2) The employing office must provide each employee eligible to elect FERS coverage with a copy of or ready access to the FERS Transfer Handbook.

(c) An election received by an employing office before July 1, 1998, is deemed to have been received by the employing office on July 1, 1998.

(d) An agency decision that an employee is not eligible to elect FERS coverage or refusing to accept a belated election under § 846.724 must be in writing, must fully set forth the findings and conclusions of the agency, and must notify the employee of the right to appeal the decision under this section to the Merit Systems Protection Board, including all information required under the Board's regulations. See 5 CFR 1201.21.

#### § 846.724 Belated elections and correction of administrative errors.

(a) *Belated elections.* The employing office may accept a belated election of FERS coverage if it determines that—

(1) The employing office did not provide adequate notice to the employee in a timely manner;

(2) The agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner; or

(3) The employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit.

(b) *Correction of administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

#### § 846.725 Appeal to the Merit Systems Protection Board.

(a) A person whose rights or interests under this part are affected by an agency decision that an employee is not eligible to elect FERS coverage or an agency refusal to accept a belated election

under § 846.724, or an OPM decision denying an extension or waiver under § 846.722, may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of this title.

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under this subpart. An agency decision must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

#### § 846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.

The employing office is delegated authority to act as OPM's agent for the receipt of any documents that employees are required by this subpart to file with OPM. Such documents are deemed received by OPM on the date that the employing office receives them.

[FR Doc. 98-16264 Filed 6-17-98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 28

[CN-98-004]

#### Revision of User Fees for 1998 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1998 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1997 user fee for this classification service was \$1.40 per bale. This rule would reduce the fee for the 1998 crop to \$1.30 per bale. The reduction in fees resulted from increased efficiency in classing operations. The fee is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

**DATES:** *Effective Date:* July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Lee Cliburn, 202-720-2145.