Federal Register
Vol. 51, No. 173
Monday, September 8, 1986

Presidential Documents

Title 3—

The President

Notice of September 4, 1986

Continuation of the South Africa Emergency

On September 9, 1985, by Executive Order No. 12532, I declared a national emergency to deal with the threat to the foreign policy and economy of the United States constituted by the actions and policies of the Government of South Africa. Because those actions and policies continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States, the national emergency declared on September 9, 1985, must continue in effect beyond September 9, 1986. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to South Africa. Additional measures to deal with this threat will be considered upon the completion of consultations with key Allies on joint, effective measures to eliminate apartheid and encourage negotiations for peaceful change in South Africa. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
September 4, 1986.

[FR Doc. 86-20269
Filed 9-4-86; 2:42 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's message to Congress, dated Sept. 4, 1986, on the continuation of the South Africa emergency, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 36).

Rules and Regulations

Federal Register
Vol. 51, No. 173
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement the retirement provisions of the Federal Employees Benefits Improvement Act of 1986 (FEBIA) which made several changes in the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA). These interim rules also include changes to the current interim rules for implementing CSRSEA based on the comments received and our operational experience.

DATE: Interim rules effective September 8, 1986; comments must be received on or before November 7, 1986.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

Send applications under §§ 831.621 through 831.623 of these rules to the Office of Personnel Management, Employee Service and Records Center, Attention: Spouse Equity Act Coordinator, Boyers, PA 16017.

Send court orders affecting retirement benefits under Subpart Q of these rules to Allotments Branch, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–1265.

SUPPLEMENTARY INFORMATION: On May 13, 1985, we published (50 FR 20064) interim rules and requested comments to implement the Civil Service Retirement Spouse Equity Act of 1984 (Pub. L. 98–615). A typographical error in the interim rules was corrected on May 22, 1985, 50 FR 21031.

Title II of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, made miscellaneous changes in CSRSEA. These interim rules are necessary to conform our earlier-published interim rules to implement CSRSEA with the changes made by FEBIA. In addition, changes in the interim rules are necessary to correct errors or omissions discovered through comments.

1. Changes Based on Comments

Eleven comments were received in response to our request. Four changes in these interim rules are based on those comments.

Two commenters requested that addresses be included in the rules to notify former spouses where to send (1) court orders under Subpart Q of these rules; and (2) applications for survivor benefits under § 831.622. In response, we have included the appropriate addresses in the "**ADDRESSES**" section of this rulemaking notice.

One commenter pointed out that § 831.620(a) failed to state the commencing date for court-ordered former spouse annuities in cases when the marriage was terminated and the employee retired after May 6, 1985. This oversight has been corrected in these interim rules.

Two commenters stated that it is inappropriate to require postal return receipts as proof of spousal notification under § 831.2007 because the receipt proves only that some piece of mail was delivered, not necessarily the notification form. To correct this deficiency, these interim rules establish that as an alternative to submission of a notification form signed by the spouse, the employee may submit (1) affidavits of witnesses to the notification; (2) proof that the current or former spouse's whereabouts are unknown; or (3) the current or former spouse's current mailing address. The refund application will inform the employee that alternative 3 will result in a 6- to 8-week delay in payment of the refund while we notify the spouse. It will also inform the employee that the refund will be denied if the notice cannot be delivered at the address provided. In addition, we have modified § 831.2007 to clarify that when affidavits of witnesses to the attempted notification are used, the witnesses must attest that they witnessed the attempt to deliver the notification form, not just an oral attempt at notification.

One commenter inquired whether a spouse or former spouse must be notified in accordance with CSRSEA when retirement contributions are transferred from one Federal retirement system to another. This is done to switch credit attained under one system to another system under certain circumstances involving individual entitlements. (For example, under Pub. L. 85–157, August 21, 1957, when Secret Service employees attain sufficient service to be covered under the District of Columbia Police and Firefighters Retirement and Disability System, contributions are transferred to permit the transfer of service credit.) We have added § 831.2010 to clarify that transfers of funds between retirement systems are not refunds; therefore, they are not subject to the spousal notification requirements.

2. Changes To Correct Omissions

After publication of the first interim rule, we discovered several provisions that were unclear or contained minor errors. We have corrected these deficiencies in these interim rules.

Section 831.105 has been amended to expressly provide that interest is to be compounded annually. Compound interest is necessary to implement the intent of the interest provisions of CSRSEA that the Civil Service Retirement and Disability Fund be approximately compensated for the income lost because the applicable survivor reductions were not taken. Interest on the interest lost is essential to the Fund because the money that would have been in the Fund would have earned compound interest.

A new paragraph was added to § 831.105 to specify the formula used in computing interest under CSRSEA deposits. Interest on CSRSEA deposits compounds annually, but accrues monthly. The formula in § 831.105(h) was developed to accomplish this purpose. To compute the interest on each monthly difference between the rate paid to the retiree and the reduced

rate that would have been in effect, 1.06 is raised to the power equal to one-twelfth of the number of months between the date when the benefit was paid and the date when collection of the deposit will begin (the date when collection begins is also the date when the annuity will be reduced to provide the survivor benefit). The 1.06 is the principal (1.00) plus the annual interest rate (.06). The exponent is the time period during which the interest is applied.

For example, if a retiree whose annuity commenced on January 1, 1985, at a rate of $14,700 per year, elected to provide a full survivor annuity for a former spouse, the retiree's annuity would be reduced by $100 per month. If the reduction began on November 1, 1985 (first reflected in the December 1 annuity check) the retiree would owe a deposit of $1027.17, as of December 1, 1985, computed as follows:

Date of check	Difference in rates	Months prior to annuity adjustment	Interest factor	Interest
Feb. 1, 1985	$100	10	.049756	$4.9756
Mar. 1, 1985	100	9	.044671	4.4671
Apr. 1, 1985	100	8	.039610	3.9610
May 1, 1985	100	7	.034574	3.4574
June 1, 1985	100	6	.029563	2.9563
July 1, 1985	100	5	.024576	2.4576
Aug. 1, 1985	100	4	.019613	1.9613
Sept. 1, 1985	100	3	.014674	1.4674
Oct. 1, 1985	100	2	.009759	.9759
Nov. 1, 1985	100	1	.004868	.4868
Dec. 1, 1985	0	0	.000000	.0000
Total	1000			27.1664

If the deposit is not paid in a single lump sum, we will collect it in monthly installments fixed at 25 percent of the net annuity paid December 1, 1985. The retiree's gross annuity is $1125 per month. Assuming Federal income tax withholdings of $222.05 and Federal Employees Health Benefits premiums of $102.95 per month, the retiree would have a net annuity of $800 per month. Collection would be made at the rate of $200 per month for 5 months with a final installment of $37.71 from the May 1, 1986 annuity check, as follows:

Date of check	Additional interest	Revised balance	Payment	Remaining balance
Dec. 1, 1985	$0.0000	$1027.1664	$200	$827.1664
Jan. 1, 1986	4.0266	831.1930	200	631.1930
Feb. 1, 1986	3.0726	634.2656	200	434.2656
Mar. 1, 1986	2.1140	436.3796	200	236.3796
Apr. 1, 1986	1.1507	237.5303	200	37.5303
May 1, 1986	.1827	37.7130	37.71	0.0000

Accordingly, the retiree would pay a total of $1037.71, of which $1000 is the amount by which the annuity would have been reduced and $37.71 is interest.

Section 8341(b)(1) of title 5, United States Code, allows the current spouse of an employee or Member whose annuity is based on a separation before October 11, 1962, a maximum survivor annuity of 50 percent of the employee's or Member's unreduced annuity; the reduction to provide that annuity is computed under the formula provided by section 9 of the Civil Service Retirement Act Amendments of 1956, Pub. L. 84–854, as required by section 1104 of the Civil Service Retirement Act Amendments of October 11, 1962, Pub. L. 87–793. These interim rules provide that the same maximum annuity rate and reduction formula apply also to the *former* spouse of an employee or Member whose annuity is based on a separation before October 11, 1962. (However, the reduction formula to provide a survivor annuity for a current spouse acquired after retirement, or for a former spouse divorced after retirement, will continue to be computed as provided in section 8339(j)(4) of title 5, United States Code.) Sections 831.604, 831.605, 831.612, 831.613, and 831.614 were modified to clearly state these rules.

The definition of "time of retirement" in § 831.603 has been corrected to explain more clearly that it refers to the first day for which annuity benefits are paid. In immediate annuity cases, this will usually be either the day after pay ceases, or the beginning of the month after pay ceases, if the employee worked more than 3 days during the month of retirement. In deferred annuity cases, this will be the former employee's 62nd birthday.

Section 831.606(9) states that in cases when the retiree elects both a fully or partially reduced annuity and an insurable interest annuity, both reductions are computed from the rate of the self-only annuity. It failed to explain that the beneficiary of the insurable interest annuity will receive an annuity equal to 55 percent (50 percent if the annuity is based on a separation before October 11, 1962) of the retiree's rate after the reduction for the insurable interest election but before any reduction to provide the current spouse annuity or former spouse annuity. This has been corrected in these interim rules.

Section 831.608(b)(1) of the current interim rules was superfluous. It has been eliminated from these interim rules.

The formula for computing the amount of the deposit under § 831.621(c)(2) was designed to cover only cases in which the retiree had a single former spouse for whom a spousal annuity had been provided prior to divorce. The formula has been corrected to cover situations when the retiree has had survivor reductions for more than one spouse. The revised formula conforms to our original intent that retirees will not be charged again for any time period when they were receiving a reduced annuity during the marriage to the spouse for whom they are now providing a former spouse annuity.

Section 831.623 has been amended to clarify that the rate of annuity payable to current spouses based on elections under that section will be at the same rate that would have been paid if the election had been at the first opportunity. This clarification principally affects survivors of disability annuitants who retired before October 20, 1969. The maximum annuity rate for those survivors is based on the employee's earned annuity (based on length of actual service) without the benefit of the 40 percent minimum or projection to age 60 applicable to the survivors of disability retirees who retired on or after October 20, 1969.

Section 831.701(d) has been amended to correct a reference to former § 831.1002 which has been renumbered § 831.620.

Section 831.1706(a) was clarified to express its original purpose that only funds to which the employee has an immediate entitlement can be affected by court orders aimed at employee retirement benefits.

3. Changes Based on FEBIA

Section 831.301 has been amended to include the right of former spouses to make the deposits required under Subpart C of this part to obtain credit for post-1956 military service. "Survivor," as used in Subparts C and U of this part, includes former spouses entitled to survivor annuities. In addition, § 831.602 of the interim rules has been amended to cross reference the provision on military deposits in Subparts C and U.

The definition of "former spouse" in § 831.603 was incorrect because it failed to provide that, except for the retroactive cases under §§ 831.621 and 831.622 (section 4(b) of CSRSEA), only persons married to employees or Members after CSRSEA became effective could be "former spouses" under Subpart F. This was required by section 4(a) of CSRSEA which limited the effect of the (section 2) retirement

changes to persons married to employees or Members after CSRSEA became effective. Section 201(a) of FEBIA extended coverage to additional former spouses. Now a person may meet the definition of a "former spouse" if either the marriage to the employee terminates after May 6, 1985, or the employee retires after that date. The definition of former spouse has been changed accordingly.

Under section 203(c)(2) of FEBIA, a current spouse may no longer be the beneficiary of both a fully or partially reduced annuity and an insurable interest annuity. Section 831.606(c) has been rewritten to require spousal consent giving up the right to a current spouse annuity before an insurable interest election can be made to benefit that spouse. The consent requirement prevents the spouse from receiving both annuities. To prevent an unintended inequity, we have provided that this *pro forma* consent will be cancelled if the employee cancels the insurable interest election under § 831.609 or fails to meet the requirements to make the election (e.g., fails to prove that he or she is in good health). Similiarly, we have continued the conversion right under § 831.606(h). That section has been amended to provide the right to cancel the *pro forma* consent when all former spouses' entitlements terminate, if the insurable interest annuity was elected to benefit the current spouse because the former spouse(s) had prior right to the spousal annuity.

Section 831.611(b) implements section 307 of FEBIA for employees who retire after May 27, 1986. These retirees are allowed to increase the amount allotted for a current spouse annuity during the 18-month period after retirement. An election under this section which causes the current spouse annuity and any former spouse annuities to exceed the total allowable survivor annuity will force a reduction in the former spouse annuities except to the extent that the former spouse annuities are required by court order. If a reduction in a former spouse annuity would be contrary to a court order, the court order prevents payment of the current spouse annuity to the extent necessary to comply with the court order and § 831.614.

Sections 831.612 and 831.613 have been amended to reflect the change in effective date of CSRSEA provided in section 201(a) of FEBIA. Under CSRSEA, generally, only retirees who retired on or after May 7, 1985, could elect to provide former spouse annuities for spouses from whom they were divorced after retirement. Under FEBIA and the new § 831.612, all retirees receiving reduced annuities to provide a current spouse annuity will be entitled to elect to provide a former spouse annuity for that spouse if the marriage terminates.

CSRSEA permitted a 2-year time limit in which to elect a reduced annuity to provide a survivor annuity for a spouse acquired after retirement only for retirees who retired after May 6, 1985. Under FEBIA and the new § 831.613, the 2-year election period applies to all marriages on or after February 27, 1986, even if the retiree retired years earlier.

Section 831.613(b)(4)(ii) was added to implement section 203(c)(1) and (c)(3) of FEBIA. If a retiree marries after retirement and elects a reduced annuity to benefit the new spouse, that election automatically voids an insurable interest election to benefit the same person, but gives the retiree the option of voiding an election of an insurable interest annuity if the beneficiary of the insurable interest annuity is a person other than the spouse acquired after retirement.

Section 831.617 was revised to conform to the changes in the rates of child annuities in section 205 of FEBIA. The revised provision sets each child's annuity rate depending on whether the child has a living parent who was the current or former spouse of the employee, Member, or retiree.

The new children's rates under FEBIA will be applied in the cases of children whose annuities commence on or after February 27, 1986, or whose annuities are required to be recomputed because of the death of the deceased employee's widow, former spouse, or another child, on or after that date.

Section 831.618 was revised to conforms to the change in the effective date of the CSRSEA marriage duration requirement under section 201(a) of FEBIA. Under CSRSEA, the former § 831.618 stated the marriage duration requirements before a survivor annuity right attaches based on a death of an annuitant who retired on or after May 7, 1985, or an employee or Member who died while employed in a position under CSRS on or after that date. Section 8341(a) of title 5, United States Code, as amended, provides that a spouse must be married to an employee, Member, or annuitant for only the 9 months immediately preceding death or be the parent of a child of that marriage to be eligible for a survivor annuity. Prior law (which continued to apply to annuitants who retired before May 7, 1985) required 1 year of marriage. Section 8341(i) of title 5, United States Code, provides that the requirement that a surviving spouse of an employee or Member must have been married to an employee or Member for at least 9 months immediately before death is satisfied in any case in which the death was accidental or in which the surviving spouse previously had been married to the individual and the aggregate time married is at least 9 months. These statutory changes were extended by FEBIA to cover all marriages after November 7, 1984 (including marriages by retirees who retired before May 7, 1985).

Section 831.620(e) incorporates the provision of section 204 of FEBIA for prorating the initial cost-of-living increases for former spouse annuities and beneficiaries of insurable interest annuities in the same manner as has been done for employee and current spouse annuities.

Section 831.621 has been amended to incorporate several changes made by FEBIA. Section 831.621 (a), (c), and (e) were changed to permit election of a partially reduced annuity to provide a former spouse annuity in accordance with section 201(d) of FEBIA. Previously, only an election of a fully reduced annuity was permitted under § 831.621. Section 831.621(b)(4) was changed to reflect the new time limit for making the election. That deadline is 12 months after publication of these interim rules.

Section 201(b) of FEBIA extended benefits under section 4(b) of CSRSEA to former spouses of employees who were eligible for immediate annuities but died (before May 7, 1985) while still employees. This change has been incorporated into § 831.622.

Section 831.622(a)(1) includes the five requirements to receive an annuity under section 4(b)(1)(B) of CSRSEA, as amended by section 201(b)(1)(C) of FEBIA. The CSRSEA requirement that the former spouse not be receiving an employer-provided retirement or survivor annuity in order to be eligible has been eliminated.

Section 831.622(a)(2) is the alternate method of qualifying under section 201(b)(3) of FEBIA. Under this provision, former spouses whose marriages were terminated before September 15, 1978, can qualify for annuities under this section if, at the time of application, no one else is receiving or designated to receive an annuity, other than a child's annuity, based on the service of the employee.

Section 831.622(b)(3) was revised to limit the former spouse's responsibility for notifying us about changes in status to giving notice of remarriage before age 55. The changes made by section 201 of FEBIA made the other information required by the previous § 831.622(b)(3) (i.e., eligibility for an employer-provided

retirement or survivor annuity) irrelevant.

Section 831.624 was amended to include references, in paragraphs (a) and (e), to the new deposit requirements in §§ 831.611, 831.628, and 831.629. The deposits are required for changes in election under these sections as provided in section 307 of FEBIA.

Section 201(a) of FEBIA extends survivor annuitant's right to remarry (without loss of the survivor annuity) after age 55 (rather than 60) to all remarriages on or after the date of enactment of CSRSEA (November 8, 1984). CSRSEA applied the age-55 standard only in cases in which the employee retired or died while serving in a position covered by the Civil Service Retirement System (CSRS) on or after May 7, 1985. Section 831.625 has been amended to reflect this change.

Section 307(b) of FEBIA granted retirees who retired before May 28, 1986, an 18-month period in which to increase the survivor protection for their current spouses provided that the current spouse is the same spouse to whom they were married at retirement and the increase does not cause all survivor annuities provided by that retiree to exceed the maximum. The election for these cases is the same as under § 831.611(b) (discussed above) except that, in accordance with section 307(b)(2)(B)(ii) of FEBIA, no interest on the deposit is charged under § 831.628.

Section 831.629 regulates the deposit required for a "later" election made under § 831.611(b) or 831.628. Section 307 of FEBIA provides that the deposit is equal to the sum of reductions that would have been made to the retired employee's annuity if the later election had been made at retirement, plus the additional cost to the CSRS associated with the later election.

We are assuming that 5 percent of the retirees who use this second opportunity to elect a survivor annuity or to increase the survivor base amount constitute—in actuarial terms—an "adverse selection." In other words, the *probability* of their spouse receiving a survivor annuity has increased. (For example, the retirees may have learned of a deterioration in their health status since making the original election.) Also, because a higher mortality rate is projected for this group, their survivors are assumed to receive benefits over a longer period of time. While it is logical to assume that the rate of "adverse selections" is actually much greater than 5 percent, this minimum number was established pending the development of actual mortality experience.

Accordingly, the additional cost associated with allowing this later election is the amount projected to be paid in survivor annuities (offset by projected reductions to the retirees' annuity) in the 5 percent of the cases representing "adverse selections." Spreading this total cost over the entire class of retirees making a later election, we derived an average cost of $245 per $1,000 of change in the designated base for computing the survivor annuity. We will recalculate this cost based on the actual costs to the system after we have had sufficient experience (estimated to require 10–15 years).

Sections 831.1704(d) and 831.1711 were amended to reflect the change in the effective date of CSRSEA provided in section 201(a) of FEBIA. Previously, court orders could award survivor annuities only if both the court order terminating the marriage and the employee's retirement or death while serving in a position covered by CSRS were on or after May 7, 1985. Now, under FEBIA, courts may generally award a survivor annuity provided either of these conditions is fulfilled. Two exceptions remain: Retirees who retired before May 7, 1985, are only subject to the terms of any divorce decree issued on or after that date which requires them to provide a former spouse survivor annuity if they had elected to provide a current spouse survivor annuity for that spouse when they retired, or, in the case of a post-retirement marriage, they had elected to provide a survivor annuity for that spouse before May 7, 1985. The second exception pertains to employees who were divorced before May 7, 1985, and who die in service on or after that date. In such a case, the law does not provide for compliance with a court order awarding a survivor annuity to the former spouse.

The amendment to § 831.1704(e) was required by section 208 of FEBIA which prohibited changes in court orders after the death of the employee.

The amendment to § 831.2009 was to permit court orders to block refunds of retirement deductions in legal separation cases as well as final divorce cases, as provided in section 209 of FEBIA. Before FEBIA, courts could block refunds in divorce cases but not in legal separation cases.

4. Interpretive Guideline

Lastly, we are adding a guideline (as Appendix B to Subpart Q) for interpreting orders which award survivor annuities. This guideline emphasizes the difference between reduced annuities to provide former spouse annuities under section 8339(j) of title 5, United States Code, and insurable interest annuities under section 8339(k) of title 5, United States Code. We hope that this guideline will eliminate the confusion which has been apparent from the telephone inquiries that we have received.

Under section 553(d)(3) of title 5, United States Code, I find that there is good reason to make these amendments effective in less than 30 days. The regulations are effective upon publication to prevent harm to persons entitled to benefits under FEBIA. Delaying rulemaking would be contrary to the public interest as expressed in FEBIA because such a delay could require delayed payments in cases authorized by the revised statute most of which was effective retroactive to May 7, 1985, until implementing regulations could be put in place. Although later payments could be retroactive to May 7, 1985, when entitlement attached on that date, delay could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

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 retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Personnel Management Office, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.105, paragraph (h) is added to read as follows:

§ 831.105 Computation of interest.

* * * * *

(h) Interest under §§ 831.612, 831.613, 831.621, and 831.623 is compounded annually and accrued monthly.

(1) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between (i) 1.06 raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and (ii) 1.

(2) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (h)(1) of this section.

(3) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between (i) 1.06 raised to the 1/12th power; and (ii) 1.

Subpart C—Credit for Service

3. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

4. Section 831.301 is amended by removing the words "employee or Member (or his or her widow(er))" and inserting in their place "employee, Member, or survivor."

Subpart F—Survivor Annuities

5. The authority citation for Subpart F of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Section 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251.

6. In § 831.602, paragragh (f) is added to read as follows:

§ 831.602 Relation to other regulations.

* * * * *

(f) Subparts C and U of this part contain information about service credit deposits by survivors of employees or Members.

7. In § 831.603, the definitions of "former spouse" and "time of retirement" are revised to read as follows:

§ 831.603 Definitions.

* * * * *

"Former spouse" means a living person who was married for at least 9 months to an employee, Member, or retiree who performed at least 18 months of creditable service in a position covered by CSRS and whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree. Except in §§ 831.621 and 831.622, "former spouse" includes only persons who were married to an employee or Member on or after May 7, 1985, or who were the spouse of a retiree who retired on or after May 7, 1985, regardless of the date of termination of the marriage.

* * * * *

"Time of retirement" means the effective commencing date for a retired employee's or Member's annuity.

8. In § 831.604, paragraphs (c) and (d) are added to read as follows:

§ 831.604 Election at time of retirement of fully reduced annuity to provide a current spouse annuity.

* * * * *

(c) The maximum rate of a current spouse annuity is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a current spouse annuity is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(d)(1) The amount of the reduction to provide a current spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a current spouse annuity (under § 831.613) for a spouse acquired after retirement.

(2) The amount of the reduction to provide a current spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

9. Section 831.605 is amended by revising paragraph (c)(2) and adding paragraphs (e) and (f) to read as follows:

§ 831.605 Election at time of retirement of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

* * * * *

(c) * * *

(2) Would cause the total of current spouse annuities and former spouse annuities payable based on the employee's or Member's service to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the self-only annuity to which the employee or Member would be entitled.

* * * * *

(e) The maximum rate of a former spouse annuity under this section or § 831.612 is 55 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position under CSRS on or after October 11, 1962. The maximum rate of a former spouse annuity under this section or § 831.612 is 50 percent of the rate of the retiring employee's or Member's self-only annuity if the employee or Member is retiring based on a separation from a position covered under CSRS between September 30, 1956, and October 11, 1962.

(f)(1) The amount of the reduction to provide a former spouse annuity equals 2½ percent of the first $3600 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $3600, if—

(i) The employee's or Member's separation on which the retirement is based was on or after October 11, 1962; or

(ii) The reduction is to provide a former spouse annuity (under § 831.612) for a former spouse from whom the employee or Member was divorced after retirement.

(2) The amount of the reduction to provide a former spouse annuity under this section for former employees or Members whose retirement is based on separations before October 11, 1962, equals 2½ percent of the first $2400 of the designated survivor base plus 10 percent of the portion of the designated survivor base which exceeds $2400.

10. Section 831.606 is amended by revising paragraphs (c), (g), and (h), and by adding a new paragraph (k) to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(c)(1) In the case of a married employee or Member, an election under this section may not be made on behalf of a current spouse unless that current spouse has consented to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1).

(2) A consent (to an election not to provide a current spouse annuity in accordance with § 831.604(a)(1)) required by paragraph (c)(1) of this

section to be eligible to be the beneficiary of an insurable interest annuity is cancelled if—

(i) The retiree fails to qualify to receive the insurable interest annuity; or

(ii) The retiree changes his or her election to receive an insurable interest annuity under § 831.609; or

(iii) The retiree elects a fully or partially reduced annuity to provide a current spouse annuity under § 831.628.

(3) An election of a partially reduced annuity under § 831.611(b) or § 831.628 to provide a current spouse annuity for a current spouse who is the beneficiary of an insurable interest annuity is void unless the spouse consents to the election.

(4) If a retiree who had elected an insurable interest annuity to benefit a current spouse elects a fully reduced annuity to provide a current spouse annuity (or, with the consent of the current spouse, a partially reduced annuity to provide a current spouse annuity) under § 831.611(b) or § 831.628, the election of the insurable interest annuity is cancelled.

* * * * *

(g) (1) When an employee or Member elects both an insurable interest annuity and a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity and/or a former spouse annuity or annuities, each reduction is computed based on the self-only annuity computation. The combined reduction may exceed the maximum 40 percent reduction in the retired employee's or Member's annuity permitted under section 8339(k)(1) of title 5, United States Code, applicable to insurable interest annuities.

(2) The rate of annuity paid to the beneficiary of an insurable interest election, when the employee or Member also elected a fully reduced annuity or a partially reduced annuity, equals 55 (or 50 percent if based on a separation before October 11, 1962) percent of the rate of annuity after the insurable interest reduction. The additional reduction to provide a current spouse annuity or a former spouse annuity is not considered in determining the rate of annuity paid to the beneficiary of the insurable interest election.

(h) (1) Except as provided in § 831.605(d), if a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity has also elected an insurable interest annuity to benefit a current spouse and if the eligible former spouse dies or remarries before age 55 and no other former spouse is entitled to a survivor annuity based on an election made in accordance with § 831.612 or a qualifying court order, the retiree may elect, within 2 years after the former spouse's death or remarriage, to convert the insurable interest annuity to a fully reduced annuity to provide a current spouse annuity, effective on the first day of the month following the death or remarriage of the former spouse.

(2) An election under paragraph (h)(1) of this section cancels any consent not to receive a current spouse annuity required by paragraph (c) of this section for the current spouse to be eligible for an annuity under this section.

(3) When a former spouse receiving an annuity under section 8341(h) of title 5, United States Code, loses eligibility to that annuity, a beneficiary of an insurable interest annuity who was the current spouse at both the time of the retiree's retirement and death may, within 2 years after the death or remarriage of the former spouse, elect to receive a current spouse annuity instead of the annuity he or she had been receiving.

* * * * *

(k) (1) An election under this section is prospectively voided by an election of a reduced annuity to provide a current spouse annuity under § 831.613 that would benefit the same person.

(2) (i) If the spouse is not the beneficiary of the election under this section, a retiree may prospectively void an election under this section at the time the retiree elects a reduced annuity to provide a current spouse annuity under § 831.613.

(ii) A retiree's election to void an election under paragraph (k)(2)(i) of this section must be filed at the same time as the election under § 831.613.

11. In § 831.608, paragraph (b) is revised to read as follows:

§ 831.608 Waiver of spousal consent requirement.

* * * * *

(b) The spousal consent requirement will be waived if the employee or Member presents a judicial determination regarding the current spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

12. Section 831.611 is revised to read as follows:

§ 831.611 Changes of election after final adjudication.

(a) Except as provided in section 8339 (j) or (k) of title 5, United States Code, or §§ 831.621, 831.623, 831.628, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

(b) (1) Except as provided in § 831.606 and paragraphs (b)(2) and (b)(3) of this section, a retiree who was married at the time of retirement and has elected a self-only annuity, or a partially reduced annuity to provide a current spouse annuity, or a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity, or an insurable interest annuity may elect, no later than 18 months after the time of retirement, an annuity reduction or an increased annuity reduction to provide a current spouse annuity.

(2) A current spouse annuity based on an election under paragraph (b)(1) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3) To make an election under paragraph (b)(1) of this section, the retiree must pay, in full, a deposit determined under § 831.629, plus interest, at the rate provided under § 831.105(g), no later than 18 months after the time of retirement.

(4) If a retiree makes an election under paragraph (b)(1) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(5) An election under paragraph (b)(1) of this section, cancels any spousal consent under § 831.604 to the extent of the election.

(6) An election under paragraph (b)(1) of this section is void unless it is filed with OPM before the retiree dies.

(7) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity or former spouse annuities makes an election under paragraph (b)(1) of this section which would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to not exceed the maximum allowable under § 831.614.

13. In § 831.612, paragraph (a) is revised to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a) (1) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7,

1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(2) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired before May 7, 1985, and whose marriage was terminated on or after May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity if the retiree while married to the former spouse had elected, prior to May 7, 1985, a reduced annuity to provide a current spouse annuity for that spouse. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

(3) Except as provided in paragraphs (b) and (c) of this section, a retiree who retired on or after May 7, 1985, and before February 27, 1986, and whose marriage terminated before May 7, 1985, may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be made no later than February 27, 1988.

* * * * *

14. In § 831.613, the introductory text of paragraphs (a) and (b), and paragraphs (b) (3) and (4) are revised to read as follows:

§ 831.613 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a current spouse annuity.

(a) In cases of retirees who retired before May 7, 1985, and married after retirement but before February 27, 1986:

* * * * *

(b) In cases involving retirees who retired on or after May 7, 1985, or married on or after February 27, 1986:

* * * * *

(3) An election under paragraph (b)(1) or (b)(2) of this section is not effective to the extent that it conflicts with a qualifying court order or would cause the combined current and former spouse annuities to exceed 55 percent (or 50 percent if based on a separation before October 11, 1962) of the retiree's annuity.

(4) (i) Except as provided in paragraph (b)(4)(ii) of this section, a retiree making an election under this section must deposit an amount equal to the difference between the amount of annuity actually paid to the retiree and the amount of annuity that would have been paid if the reduction elected under paragraphs (b)(1) or (b)(2) of this section had been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date when each difference occurred.

(ii) An election under this section may be made without deposit, if that election prospectively voids an election of an insurable interest annuity.

* * * * *

15. In § 831.614, paragraph (a) is revised to read as follows:

§ 831.614 Division of a survivor annuity.

(a) Except as provided in §§ 831.621 and 831.622, the maximum combined total of all current and former spouse annuities (not including any benefits based on an election of an insurable interest annuity) payable based on the service of a former employee or Member equals 55 percent (or 50 percent if based on a separation before October 11, 1962) of the rate of the self-only annuity that otherwise would have been paid to the employee, Member, or retiree.

* * * * *

16. Section 831.617 is revised to read as follows:

§ 831.617 Rates of child annuities.

(a) (1) The rate of annuity payable to a child survivor whose annuity commenced before February 27, 1986, is computed in accordance with the law in effect on the date when the annuity began to accrue, unless the rate of annuity is recomputed under paragraph (e) of this section on or after February 27, 1986.

(2) The rate of annuity payable to a child survivor whose annuity commenced on or after February 27, 1986, or was recomputed under paragraph (e) of this section on or after February 27, 1986, is computed under paragraph (b), (c), or (d) of this section.

(b) Except as provided in paragraph (a) of this section, the rate of annuity of a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member or annuitant was never married to a natural or adoptive parent of that surviving child of the former employee or Member.

(c) Except as provided in paragraphs (a) and (b) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (A) through (C) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, whenever a deceased employee, Member, or retiree is survived by a natural or adoptive parent of that surviving child of the employee, Member, or retiree.

(d) Except as provided in paragraph (a) of this section, the rate of annuity payable to a child survivor is computed under section 8341(e)(2) (i) through (iii) of title 5, United States Code, with adjustments in accordance with section 8340 of title 5, United States Code, when the deceased employee, Member, or retiree is not survived by a natural or adoptive parent of that surviving child of the former employee or Member.

(e) On the death of a natural or adoptive parent or termination of the annuity of a child, the annuity of any other child or children is recomputed and paid as though the parent or child had not survived the former employee or Member.

17. In § 831.618, the introductory text of paragraph (a) is revised to read as follows:

§ 831.618 Marriage duration requirements.

(a) The surviving spouse of a retiree who retired on or after May 7, 1985, or of a retiree who retired before May 7, 1985, but married that surviving spouse on or after November 8, 1984, or of an employee or Member who dies while serving in a position covered by CSRS on or after May 7, 1985, or of an employee or Member who died while serving in a position covered by CSRS before May 7, 1985, but married that surviving spouse on or after November 8, 1984, can qualify for a current spouse annuity only if—

* * * * *

18. Section 831.620 is amended by revising the section heading, revising paragraph (a), and adding paragraph (e) to read as follows:

§ 831.620 Commencing and terminating dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or retiree; or (2) attainment of age 50 when, under section 12 of the Civil Service Retirement Act Amendments of February 29, 1948, the annuity is deferred until age 50; or (3) a claim is received in OPM when an annuity is authorized for unremarried widows and widowers by section 2 of the Civil Service Retirement Act Amendments of June 25, 1958, 72 Stat. 218; or (4) the later of the date of death of the retiree or the first day of the second month after the date the application for annuity is filed under § 831.622; or (5) the later of the date of death of the employee, Member, or retiree or the first day of the second month after the court order awarding the

former spouse annuity is received in OPM when a former spouse annuity is authorized by court order under section 8341(h) of title 5, United States Code.

* * * * *

(e) Initial cost-of-living increases on current and former spouse annuities, and annuities to beneficiaries of insurable interest annuities are prorated under section 8340(c) of title 5, United States Code.

19. Section 831.621 is amended by revising paragraphs (a), (b)(4), (c), (d), (e)(1), and (e)(2), and adding paragraph (f) to read as follows:

§ 831.621 Election by a retiree who retired before May 7, 1985, to provide a former spouse annuity.

(a) A retiree who retired before May 7, 1985, including a retiree receiving a fully reduced annuity to provide a current spouse annuity, may elect a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity.

(b) * * *

(4) Be filed with OPM before September 8, 1987.

(c)(1)(i) If a retiree who is receiving an insurable interest annuity elects a fully reduced annuity or a partially reduced annuity under this section to benefit the same person, the insurable interest annuity terminates. A retiree who is receiving an insurable interest annuity at the time that an annuity is elected under this section does not owe any further deposit.

(ii) If a retiree who had been receiving an insurable interest annuity, which was terminated to elect a reduced annuity to provide a current spouse annuity for a spouse acquired after retirement, elects to provide a former spouse annuity for a former spouse who was the beneficiary of the insurable interest annuity, the retiree must deposit an amount equal to the sum of the monthly differences between the self-only annuity and a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) from the date the insurable interest annuity terminated, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(2) A retiree who elects a fully reduced annuity or a partialy reduced annuity under this section, to provide a former spouse annuity for a former spouse for whom the retiree had elected (during the marriage to that former spouse) a reduced annuity to provide a current spouse annuity, must deposit an amount equal to the sum of the monthly differences between the self-only annuity and the amount of annuity that would have been in effect had a fully reduced annuity or partially reduced annuity (with the same base as elected to provide the former spouse annuity) been in effect continuously since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable, except that the retiree will not be charged for any period during which the survivor reduction was in effect for that former spouse.

(3) A retiree who elects a fully reduced annuity or a partially reduced annuity under this section, and is not covered under paragraph (c)(1) or (c)(2) of this section, must deposit an amount equal to the sum of the monthly difference between the self-only annuity and a fully reduced annuity or a partially reduced annuity (with the same base as elected to provide the former spouse annuity) since the time of retirement, plus 6 percent annual interest, computed under § 831.105, from the date to which each monthly difference is attributable.

(d) If a retiree who is receiving a fully reduced annuity or a partially reduced annuity to provide a current spouse annuity elects a fully reduced annuity or a partially reduced annuity under this section to provide a former spouse annuity, the annuity will be reduced separately to provide for the current and former spouse annuities. Each separate reduction will be computed based on the self-only annuity, and the separate reductions are cumulative.

(e)(1) In response to a retiree's inquiry about providing a former spouse annuity under this section, OPM will send an application form. The application form will include a notice to retirees that filing the application constitutes an official election which cannot be revoked after 30 days after the annuity check in which the annuity reduction first appears.

(2) If the retiree returns the application electing a fully reduced annuity or a partially reduced annuity under this section, OPM will notify the retiree of—

(i) The rate of the fully reduced annuity or partially reduced annuity; and

(ii) The rate of the potential former spouse annuity; and

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

(iv) The amount and duration of installment payments if no deposit is made.

* * * * *

(f)(1) A retiree who made an election under this section prior to September 9, 1986 may modify that election by designating a lesser portion of the retiree's annuity be used as the base for the annuity reduction and the former spouse annuity.

(2) Any modification under paragraph (f)(1) of this section must be in writing and received in OPM no later than the date provided for applications in § 831.621(b)(4).

20. In § 831.622, paragraphs (a) and (b)(3) are revised to read as follows:

§ 831.622 Annuities for former spouses of employees or Members retired before May 7, 1985.

(a)(1) The former spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse's marriage to the retiree, employee, or Member was dissolved after September 14, 1978. The date of dissolution of a marriage is the date when the marriage between the former spouse and the retiree, employee, or Member ended under the law of the jurisdiction that terminated the marriage, rather than the date when restrictions on remarriage ended. The date of entry of the decree terminating the marriage will be rebuttably presumed to be the date when the marriage was dissolved.

(ii) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(iii) The former spouse has not remarried before reaching age 55.

(iv) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(v) The former spouse is at least 50 years old when filing the application.

(2) A former spouse who is not eligible for an annuity under paragraph (a)(1) of this section and who is the former

spouse of a retiree who retired before May 7, 1985 (or of an employee or Member who died before May 7, 1985, was employed in a position covered by CSRS at the time of death, and had fulfilled the age and service requirements to be eligible to retire under section 8336 of title 5, United States Code, at the time of death) is entitled, after the death of the retiree, employee, or Member to a survivor annuity equal to 55 percent of the annuity of the retiree on whose service the survivor annuity is based if the former spouse, at the time of application, meets all of the following requirements:

(i) The former spouse was married to the retiree, employee, or Member for at least 10 years of the retiree's, employee's, or Member's creditable service. Creditability of service is determined in accordance with section 8332 of title 5, United States Code, and subpart C of this part.

(ii) The former spouse has not remarried before reaching age 55.

(iii) The former spouse applies to OPM for a survivor annuity, in accordance with paragraph (b) of this section and § 831.619(b), before May 9, 1987.

(iv) The former spouse is at least 50 years old when filing the application.

(v) No current spouse, other former spouse, or insurable interest designee is receiving or has been designated to receive a survivor annuity based on the service of the employee, Member, or retiree.

(3) If two or more eligible former spouses of a retiree, employee, or Member apply for annuities under paragraph (a)(2) of this section based on the service of the same retiree, employee, or Member, and neither meets the requirements of paragraph (a)(1) of this section, the former spouse whose application OPM receives first is entitled to the annuity.

(b) * * *

(3)(i) Former spouses applying for benefits under this section must meet the requirements of paragraph (a) of this section at the time of application.

(ii) An annuity under this section terminates on the last day of the month before the former spouse dies or remarries before age 55. A former spouse who is receiving a former spouse annuity under this section must notify OPM within 30 days after he or she remarries before age 55.

* * * * *

21. In § 831.623, paragraph (c)(2)(iii) is revised and paragraph (f) is added to read as follows:

§ 831.623 Second chance elections to provide survivor benefits.

* * * * *

(c) * * *

(2) * * *

(iii) The amount of the deposit, including interest, that is due as of the date that the annuity reduction is scheduled to begin; and

* * * * *

(f) The rate of a survivor annuity under this section will be computed under the laws in effect at the time of the retiree's separation from the Federal service.

22. Section 831.624 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 831.624 Payments of required deposits.

(a) The deposits required to elect fully or partially reduced annuities under §§ 831.611, 831.612, 831.613, 831.621, 831.623, or 831.628 are not annuity overpayments and their collection is not subject to waiver. They are subject to reconsideration only to determine whether the amount has been correctly computed.

* * * * *

(e) The deposits required by § 831.611 or § 831.628 are controlled by § 831.629.

23. In § 831.625, paragraphs (a) and (b) are revised to read as follows:

§ 831.625 Remarriage.

(a)(1) If a recipient of a current spouse annuity remarried before November 8, 1984, the current spouse annuity terminates on the last day of the month before the recipient remarried before attaining age 60.

(2) If a recipient of a current spouse annuity remarries on or after November 8, 1984, a current spouse annuity terminates on the last day of the month before the recipient remarries before attaining age 55.

(b) A former spouse annuity or eligibility for a future former spouse annuity terminates on the last day of the month before the month in which the former spouse remarries before attaining age 55.

* * * * *

24. New §§ 831.628 and 831.629 are added to read as follows:

§ 831.628 Changes in elections to provide a current spouse annuity by a retiree who retired before May 28, 1986.

(a) Except as provided in § 831.606 and paragraphs (b) and (c) of this section, a retiree who retired before May 28, 1986, was married at the time of retirement, and at the time of retirement did not elect a fully reduced annuity to provide a current spouse annuity may elect a fully reduced annuity or a greater partially reduced annuity to provide a current spouse annuity.

(b)(1) An election under paragraph (a) of this section may be made only by a retiree who is married to the same spouse to whom the retiree was married at the time of retirement.

(2) A current spouse annuity based on an election under paragraph (a) of this section cannot be paid if it will, when combined with any former spouse annuity or annuities that are required by court order, exceed the maximum survivor annuity permitted under § 831.614.

(3)(i) Except as provided in paragraph (b)(4) of this section, to make an election under paragraph (a) of this section, the retiree must pay the deposit computed under § 831.629, in full, no later than November 28, 1987.

(ii) Except as provided in paragraph (b)(4) of this section, failure to pay the deposit, in full, before November 29, 1987, voids an election made under paragraph (a) of this section.

(4) If a retiree makes an election under paragraph (a) of this section and is prevented from paying the deposit within the 18-month time limit because OPM did not send him or her a notice of the amount of the deposit at least 30 days before the time limit expires, the time limit for making the deposit will be extended to 30 days after OPM sends the notice of the amount of the deposit.

(c) If a retiree who had elected a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity makes an election under paragraph (a) of this section that would cause the combined current spouse annuity and former spouse annuity (or annuities) to exceed the maximum allowed under § 831.614, the former spouse annuity (or annuities) must be reduced to conform with that allowed under § 831.614.

(d) An election under paragraph (a) of this section is void unless it is filed with OPM before the retiree dies.

§ 831.629 Deposit required to make an election under § 831.611(b) or § 831.628.

The amount of the deposit required under § 831.611(b) or § 831.628 equals the sum of the monthly differences between the annuity paid to the retiree and the annuity that would have been paid if the additional annuity reduction elected under § 831.611(b) or § 831.628 had been in effect since the time of retirement, plus 24.5 percent of the increase in the designated base (computed as of the time of retirement) on which the survivor annuity is calculated.

Subpart G—Computation of Annuities

25. The authority citation for Subpart G of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

26. In § 831.701, paragraph (d) is revised to read as follows:

§ 831.701 Effective dates of annuities.

* * * * *

(d) Survivor annuities commence as provided in § 831.620.

* * * * *

Subpart Q—Court Orders affecting Civil Service Retirement Benefits

27. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

28. In § 831.1704, paragraphs (d) and (e) are revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; and

(i) The employee or Member retired under CSRS before May 7, 1985; or

(ii) The employee or Member died in service; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) Except in cases when divorces occur after retirement, a court order concerning a survivor annuity will not be honored if it is issued after the retirement of the employee or Member involved.

(2) A court order concerning a survivor annuity for a former spouse will not be honored if it is issued after the death of the employee, Member, or retiree involved.

29. In § 831.1706, paragraph (a)(2) is revised and paragraph (a)(3) is added to read as follows:

§ 831.1706 Amounts payable.

(a) * * *

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

* * * * *

30. In § 831.1711, paragraph (b)(1) is revised to read as follows:

§ 831.1711 Effective dates.

* * * * *

(b)(1) The provisions of this subpart concerning former spouse annuities apply only with respect to a former spouse of an employee, Member, or retiree who retires or dies while employed in a position covered by CSRS on or after May 7, 1985, or a former spouse whose marriage to an employee, Member, or retiree is terminated on or after May 7, 1985, regardless of the date the employee separates from a position covered by CSRS.

* * * * *

31. Appendix B to Subpart Q of Part 831 is added to read as follows:

Appendix B to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

UNITED STATES OF AMERICA

Office of Personnel Management

Compensation Group

Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Section 8339(j) of title 5, United States Code, provides for reduced annuities to provide "former spouse annuities." Section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8339(j) annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8339(j) annuity, the order must use terms such as "former spouse annuity," "section 8339(j) annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8339(k). These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8339(j) annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8339(k) will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8339(j)," the section reference will control.

Subpart T—Payment of Lump Sums

32. The authority citation for Subpart T of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

33. In § 831.2007, paragraph (e) is removed and paragraphs (c) and (d) are revised to read as follows:

§ 831.2007 Notification of current and/or former spouse before payment of lump sum.

* * * * *

(c) Proof of notification will consist of a signed and witnessed Statement by the current and/or former spouse on a form provided by OPM acknowledging that he or she has been informed of the former employee's or Member's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This Statement must be presented to the employing agency or OPM when filing the Application for Refund of Retirement Deductions.

(d) If the current and/or former spouse refuses to acknowledge the notification or the employee or Member is otherwise unable to obtain the acknowledgement, the employee or Member must submit—

(1) Affidavits signed by two individuals who witnessed the employee's or Member's attempt to personally notify the current or former spouse. The witnesses must attest that they were in the presence of the employee or Member and the current or former spouse when the employee or

Member gave or attempted to give the notification form to the current or former spouse and that the employee's or Member's purpose should have been clear to the current or former spouse; or

(2) The current mailing address of the current or former spouse. OPM will attempt to notify (by certified mail—return receipt requested) the current or former spouse at the address provided by the employee or Member. The lump-sum credit will not be paid until OPM receives the signed return receipt.

34. In § 831.2009, paragraph (a) is revised to read as follows:

§ 831.2009 Court orders or decrees preventing payment of lump sums.

(a) Payment of the lump-sum credit to a former employee or Member will be subject to the terms of any court order or decree issued with respect to any former spouse or to any current spouse from whom the employee or Member was legally separated, if—

(1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and

(2) Payment of the lump-sum credit would extinguish entitlement of the current or former spouse to a survivor annuity under section 8341(h) of title 5, United States Code, or to any portion of an annuity under section 8345(j) of title 5, United States Code.

* * * * *

35. Section 831.2010 is added to read as follows:

§ 831.2010 Transfers between retirement systems.

Transfers of employees' contributions between the Civil Service Retirement and Disability Fund and other retirement systems for Federal or District of Columbia employees when made in accordance with Federal statute for the purpose of transferring retirement service credit to the other retirement system are not subject to the notice requirements or court order provisions of this subpart.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 322

[Docket No. 85-011F]

Delivery of Export Certificates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On February 26, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule (51 FR 6743) that would permit the filing of a duplicate export certificate with the United States Customs Service within four days of the clearance of a vessel carrying a shipment of meat products. This action is consistent with regulations of the United States Customs Service that allow a delay of four business days in the filing of a Complete Cargo Declaration. In the interim period, the United States Customs Service will clear the vessel on the basis of a statement containing information as to the export certificate number. This action is necessary so that vessels carrying meat products can depart on schedule even though certain export certificates are not on file at the time of departure. Five comments were received on the proposed rule and all supported it. Therefore, FSIS is adopting the proposed rule as final with minor modifications.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Fetzner, Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The rule makes more flexible and less burdensome certain paperwork requirements mandated by the Federal Meat Inspection Act.

Background

On February 26, 1986, FSIS published in the **Federal Register** (51 FR 6743) a proposed rule to amend the Federal meat inspection regulations by adding a provision that would permit a four-day delay in the filing of a duplicate export certificate with the United States Customs Service (Customs). This delay period would enable vessels carrying meat products to depart even though the duplicate of the export certificate covering meat products intended for export had not been filed with Customs. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat products intended and offered for export to and sale in a foreign country must be inspected (21 U.S.C. 615). In addition, the FMIA prohibits the clearance for departure of any vessel carrying meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country) (21 U.S.C. 617). The FMIA also requires that copies of the certificate be filed with USDA, the owner or shipper of the products intended for export, and the chief officer of the vessel carrying the meat products (21 U.S.C. 618). Section 322.2(e) of the Federal meat inspection regulations (9 CFR 322.2(e)) had required that the duplicate of the export certificate be delivered to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer of the vessel with Customs, that is, on the day of departure. However, Customs' law and regulations allow shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest) if the vessel's cargo declaration is not complete (or if certain required shipper's export declarations are not on file), and a General Declaration is filed at departure time (46 U.S.C. 91, 19 CFR 4.75).

There have been instances where a vessel carrying meat products has been denied clearance by Customs because the export certificate, covering meat products on board, was not available at the time the vessel was due to depart. This can occur frequently because certain importing countries require that a veterinarian sign the export certificate. All such products would be certified as being sound and wholesome, and the certificate would be prepared and the boxes stamped with the number of the export certificate. However, if the veterinarian is on an assignment