Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

Presidential Documents

Title 3—

The President

Proclamation 6606 of October 7, 1993

Country Music Month, 1993

By the President of the United States of America

A Proclamation

Country music is one of America's unique musical forms. Our immigrant ancestors from Great Britain and Ireland brought their tunes and melodies with them, and those songs were reshaped by life and landscape in our new Nation. In Appalachia, the Piedmonts, the Ozarks, the Mississippi Delta, and the Pine Barrens, those songs and ballads were forged from the spirit of working men and women, farmers and field laborers, miners and railroad workers, and pioneers crossing the Great Plains.

They blended with songs of African Americans, Mexican Americans, and Cajuns. Out of this wellspring came Western swing, honky-tonk, blues, gospel, and shape note music, creating a family of many musical cousins. Country music is not one voice, but many, irresistible to the ear and to any heart that likes to sing. The instruments that accompany the songs are also from our ancestors of many lands—the dulcimer from Germany, the fiddle from all of Europe, the banjo from Africa.

Country music is about the American story. It fuses the traditions of many cultures and celebrates what makes us Americans. Country lyrics tell tales of life and love, joy and heartbreak, toil and celebration. From early folk singers like Woody Guthrie to such legends as Roy Acuff, Hank Williams, and Patsy Cline to today's bright stars—the singers all let loose the soulful music inside their hearts. In its rhythms and words, we can hear the lonesome sound, as well as the festive spirit, of our beloved land.

The Congress, by Senate Joint Resolution 102, has designated the month of October as "Country Music Month." I urge all Americans to join me in recognizing the role that country music has played in shaping our cultural heritage.

Country Music Month is a time to recognize the contributions of singers, songwriters, musicians, and all in the industry who work to bring us the very best of country music and dance. Throughout the month of October, let us celebrate country music in our homes and towns across the United States.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1993 as Country Music Month.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

Rules and Regulations

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 1993

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 294

RIN 3206–AF42

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This action renders final the changes to agency regulations implementing the Freedom of Information Act previously published by OPM as an interim rule. Because no comments were received, the interim rule making editorial changes to clarify and improve OPM's regulations implementing the Freedom of Information Act (FOIA) is effective as published.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie Crawford, (703) 908–8565.

SUPPLEMENTARY INFORMATION: OPM published interim regulations on June 8, 1993 (58 FR 32043) which made editorial changes to OPM's regulations implementing the FOIA. OPM received no comments in response to the interim rulemaking.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12292, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because costs associated with requesting information under the Freedom of Information Act are not affected.

List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, under the authority of 5 U.S.C. 552, the inertim rule amending 5 CFR 294, which was published at 58 FR 32043 on June 8, 1993, is adopted as a final rule without change.

[FR Doc. 93–25055 Filed 10–12–93; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 831, 838, 842, and 890

RIN 3206–AF66

Payment of Survivor Deposits by Actuarial Reduction

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 section 11004 of the Omnibus Budget Reconciliation Act of 1993. The Act requires OPM to reduce a retiree's annuity instead of collecting a deposit when the retiree marries during retirement and elects to provide a survivor annuity for the new spouse. These regulations comply with the requirement that OPM establish, by regulation, the method for computing the actuarial reduction on an actuarial basis. These regulations also reorganize OPM's survivor elections and survivor annuity regulations for the Civil Service Retirement System to group together sections on similar subjects and provide a more detailed table of contents to make the regulations easier to use.

DATES: Interim rules effective October 1, 1993; comments must be received on or before December 13, 1993.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; 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:

1. Change in Law on Deposits for Post-Retirement Survivor Elections

Under the retirement law in effect before October 1, 1993, a retiree who marries after retirement and elects to provide a survivor annuity for his or her spouse must pay a deposit. The deposit represents the difference between the annuity actually paid since retirement and the amount the retiree would have received with a survivor reduction; interest is added at the rate of 6 percent per year. The retiree must either send OPM the full amount of the deposit in a lump sum or authorize OPM to deduct 25 percent of the retiree's annuity until the deposit has been completed. If the retiree dies before completing the deposit, the full survivor benefit is offset until the balance of the deposit is entirely paid off. A retiree electing to provide a survivor annuity for a former spouse must also make a deposit.

Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM will no longer collect these deposits in either a lump sum or by installments. Instead, OPM is now required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefits. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under sections 8343a and 8420a of title 5, United States Code. (Section 11004 limits the maximum reduction to 25% of the full annuity, but we expect that in most cases the reduction will be less than 5% of the annuity.) Conceptually, the amended law would in essence lend the amount of the deposit to the annuitant who then repays the "loan" through a reduction in annuity payments over his or her lifetime. The effect of this change is to spread the reduction over the remaining life expectancy of the retiree. Future cost-of-living adjustments on the retiree's annuity are applied to the reduced amount. Under no circumstances would the survivor have to complete the deposit, as under the old law, because the need to make a deposit is eliminated when the permanent actuarial reduction is established.

The new law has no effect on the normal reduction in a retiree's annuity to provide survivor benefits for his or her spouse. Under FERS, this reduction remains at 10 percent of the annuity on which the survivor annuity is based, and, under CSRS rules, 2½ percent of the first $3600 per year, plus 10 percent of the amount over $3600. The actuarial reduction is in addition to the normal reduction based on these percentages.

The effective date of the statutory change is October 1, 1993. The new law applies to all deposits on which no payments have been made before the effective date. If the deposit has been partially paid prior to October 1, 1993, OPM must determine the amount of the remaining deposit and establish the actuarial reduction on the basis of that amount.

2. Reorganization of Regulations on Survivors Elections and Annuities

The current CSRS regulations on survivor elections are included in subpart F of part 831 of title 5, Code of Federal Regulations, along with the regulations concerning survivor annuities. These regulations were revised in 1985 as part of our implementation of the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, enacted November 8, 1984. As subsequent legislation required additional regulations, new sections were added at the end of the current regulations. This has produced a regulatory structure (containing 30 sections) that is difficult to use. Accordingly, we have reorganized the current regulatory provisions to provide a more coherent structure that will be easier to use.

In this reorganization, we are not changing any regulatory text. We are only changing section numbers and placing labels on groups of sections containing similar subject matter. The corresponding FERS regulations are already organized in three distinct subparts (survivor elections in subpart F of part 842, spousal annuities in subpart C of part 843, and children's annuities in subpart D of part 843) and, therefore, do not require a similar reorganization.

3. Section Analysis of Regulations To Implement the Statutory Change

A definition of "present value factor" is added to sections 831.603 and 842.602. This definition is the same one used in the regulations governing computation of the actuarial reduction associated with the alternative form of annuity.

These regulations also add sections 831.663 and 831.664 to the reorganized CSRS regulations to implement the statutory change discussed above. Section 831.663 establishes the methodology for applying the actuarial reduction to new deposits under section 11004(c)(1) of the statute. Section 831.664 establishes corresponding rules for partially paid deposits under section 11004(c)(2) of the statute.

Paragraph (a) of each section states to whom the section applies. Section 831.663 applies to retirees who have not paid any portion of the deposit before the statutory change became effective on October 1, 1993. Section 831.664 applies to retirees who have made partial lump-sum payments or who have partially completed the deposit by installments taken from annuity payable for periods before October 1, 1993. Section 831.664, not § 831.663, applies to retirees who have partially paid the deposit from the annuity payment for September 1993 (which is paid on October 1, 1993). Since any installment paid from the check dated October 1, 1993, accrued before the effective date of the law, we will treat any installment collected from a CSRS annuity check issued on October 1, 1993, as an installment correctly taken under the old law.

Paragraph (b) of each section restates the statutory requirement that a permanent actuarial reduction is the exclusive method for paying the deposit under the new law. Retirees do not have the option to pay the deposit in order to avoid the actuarial reduction.

Paragraph (c) of each section states the commencing date of the reduction. For cases in which we have not collected part of the deposit under the old law, § 831.663 provides that the reduction begins on the same date as the regular survivor reduction under section 8339 of title 5, United States Code. For cases in which we have collected part of the deposit and must convert the remaining balance to an actuarial reduction, § 831.664 provides that the reduction starts from annuity accruing on October 1, 1993, the effective date of the statute.

Paragraph (d) of each section provides the methodology for computing the actuarial reduction. For cases in which we will be converting the remaining balance of a partially paid deposit under § 831.664, we divide the amount of the remaining balance by the present value factor (as we currently do for the alternative form of annuity) to compute the monthly reduction. The present value factor will be the one for the retiree's age on October 1, 1993. If this method results in a reduction of greater than 25 percent, we reduce the annuity by 25 percent. The method for "new" deposits under § 831.663 is essentially the same except that the 25-percent limit applies to the sum of all actuarial reductions (if more than one), not to each individually, and the present value factor will be the one for the retiree's age on the commencing date of the reduction under paragraph (c).

The actuarial reduction is in addition to the regular survivor reduction. The 25-percent limit applies only to the actuarial reduction. The combined total may exceed 25 percent of the self-only annuity, but we expect it will do so in less than 5 percent of the cases.

Paragraph (e) of both sections restates the statutory provision that the reduction terminates when the retiree dies. The survivor annuity is not affected by the actuarial reduction in the retiree's annuity. Whether the retiree's reduction remains in effect for many years or only a short time, the survivor is not liable for any amount of the deposit that formed the basis for the actuarial reduction.

If the retiree died before October 1, 1993, the statutory change is inapplicable. The existing regulation that states the requirement that the survivor complete any remaining unpaid deposit in those cases has been redesignated as § 831.665.

For FERS, paragraphs (b) through (d) of § 842.615 of Title 5, Code of Federal Regulations, correspond to §§ 831.663 through 831.665 of the CSRS regulations with one difference. The CSRS provisions for conversion of partially paid deposits apply to two types of deposits for survivor elections under noncodified statutes applicable only to retirees who retired before May 7, 1985. FERS began in 1987.

The following three charts contain the present value factors that will apply beginning on October 1, 1993. These present value factors are the same as the factors currently applicable for the alternative form of annuity.

CSRS PRESENT VALUE FACTORS

Age	Reduction factor
40	322.9
41	317.7
42	312.3
43	306.9
44	301.4
45	293.4
46	285.2
47	277.8
48	270.2
49	263.8
50	257.6
51	251.2
52	245.1
53	239.1
54	232.1
55	225.1

CSRS PRESENT VALUE FACTORS—Continued

Age	Reduction factor
56	218.7
57	213.1
58	207.5
59	202.3
60	197.9
61	192.4
62	186.2
63	180.4
64	174.3
65	168.4
66	162.6
67	157.4
68	151.3
69	145.1
70	139.8
71	133.9
72	128.2
73	122.6
74	117.1
75	111.6
76	106.4
77	101.3
78	96.4
79	91.6
80	86.9
81	82.3
82	77.9
83	73.7
84	69.7
85	65.9
86	62.3
87	58.8
88	55.6
89	52.5
90	49.6

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES

Age	Reduction factor
40	171.8
41	171.7
42	171.5
43	171.4
44	171.2
45	170.0
46	168.8
47	167.9
48	166.9
49	166.4
50	166.0
51	165.7
52	165.5
53	165.4
54	164.9
55	164.5
56	164.6
57	165.1
58	165.9
59	167.3
60	169.5
61	171.2
62	169.3
63	164.4
64	159.4
65	154.3
66	149.5

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES—Continued

Age	Reduction factor
67	145.1
68	139.9
69	134.5
70	129.8
71	124.8
72	119.8
73	114.9
74	110.0
75	105.2
76	100.5
77	95.9
78	91.4
79	87.0
80	82.8
81	78.7
82	74.6
83	70.7
84	67.1
85	63.5
86	60.1
87	56.9
88	53.9
89	50.9
90	48.2

FERS PRESENT VALUE FACTORS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AIR TRAFFIC CONTROLLERS, AND MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(C) BY REASON OF DISABILITY

Age	Reduction factor
40	274.0
41	270.3
42	266.5
43	262.7
44	258.7
45	252.8
46	246.8
47	241.3
48	235.7
49	230.9
50	226.1
51	221.3
52	216.5
53	211.7
54	206.3
55	200.8
56	195.7
57	191.1
58	186.7
59	182.5
60	178.9
61	174.4

(Age 62 and over, see table for regular employees)

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 to make these rules effective in less than 30 days. The regulations are effective October 1, 1993, the effective date of the statutory change. The statute requires OPM to establish by regulation the method for computing the actuarial reduction. The statute was enacted on August 10, 1993, and affects benefits accruing on or after October 1, 1993. Considering these time frames, publication of a general notice of proposed rulemaking or the normal 30-day delay in effective date is impracticable. Delaying implementation of these regulations would be contrary not only to the statutory provision itself, but would also be contrary to the public interest. The statute that these regulations implement was intended to alleviate a financial hardship on retirees and their families. Delaying implementation of these regulations would unnecessarily prolong that hardship. Although later adjustments could be retroactive to October 1, 1993, such adjustments would be costly to the Government and 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 Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Courts, Disability benefits, Government employees, Income taxes, Pensions, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 of title 5, United States Code, is revised 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); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

2. Section 831.603 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 831.603 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

PART 838—[AMENDED]

3. The authority citation for part 838 continues to read in part as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). * * *

PART 890—[AMENDED]

4. The authority citation for part 890 continues to read in part as follows:

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

§§ 831.105, 831.112, 831.601, 831.603, 831.604, 831.605, 831.606, 831.607, 831.611, 831.612, 831.613, 831.614, 831.619, 831.620, 831.621, 831.622, 831.623, 831.624, 831.626, 831.628, 831.629, 831.630, 831.2203, 838.711, 838.733, 838.921, 838.922, 838.1006, 838.1016, 890.803, 890.805 [Amended]

5. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference (and text) indicated in the fourth column:

Section	Paragraph	Remove	Add
831.105	(h)	831.612	831.631.
831.105	(h)	831.613	831.632.
831.105	(h)	831.621	831.682.
831.105	(h)	831.623	831.684.
831.105	(j)	831.629	831.662.
831.112	(c)	831.607	831.614.
831.601	(b)	831.621	831.682.
831.601	(b)	831.622	831.683.
831.603	"Current spouse annuity"	831.618	831.642.
831.603	"Former spouse"	831.621	831.682.
831.603	"Former spouse"	831.622	831.683.
831.604	(a)(1)	831.605(b)	831.612(b).
831.604	(a)(1)	831.607	831.614.
831.604	(b)	831.608	831.618.
831.604	(c)	831.614	831.641.
831.604	(d)(1)(ii)	831.613	831.631.
831.605	(b)	831.607	831.614.
831.605	(b)	831.608	831.618.
831.605	(e)	831.612 (two occurrences)	831.632.
831.605	(f)(1)(ii)	831.612	831.632.
831.606	(a)	831.604(a)	831.611(a).
831.606	(c)(1)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)(ii)	831.609	831.621.
831.606	(c)(2)(iii)	831.628	831.685.
831.606	(c)(3)	831.611(b)	831.622(b).
831.606	(c)(3)	831.628	831.685.
831.606	(c)(4)	831.611(b)	831.622(b).
831.606	(c)(4)	831.628	831.685.
831.606	(c)(5)(iii)	831.612	831.632.
831.606	(h)(1)	831.605(d)	831.612(d).
831.606	(h)(1)	831.612	831.632.
831.606	(k)(1)	831.613	831.631.
831.606	(k)(2)(i)	831.613	831.631.
831.606	(k)(2)(ii)	831.613	831.631.
831.607	(a)	831.608	831.618.
831.611	(a)	831.621	831.682.
831.611	(a)	831.623	831.684.

Section	Paragraph	Remove	Add
831.611	(a)	831.628	831.685.
831.611	(b)(1)	831.606	831.613.
831.611	(b)(2)	831.614	831.641.
831.611	(b)(3)	831.629	831.662.
831.611	(b)(5)	831.604	831.611.
831.611	(b)(7)	831.614 (two occurrences)	831.641.
831.612	(b)(1)	831.614	831.641.
831.612	(b)(2)(ii)	831.604	831.611.
831.612	(b)(2)(ii)	831.605	831.612.
831.612	(b)(2)(ii)	831.613	831.631.
831.612	(b)(3)(i)	831.607(c)	831.614(c).
831.612	(b)(3)(i)	831.608	831.618.
831.612	(b)(3)(ii)	831.604(a)(1) or (a)(2)	831.611(a)(1) or (a)(2).
831.612	(e)(1)(ii)	831.612	831.632.
831.613	(b)(2)(i)(A)	831.604	831.611.
831.613	(b)(2)(i)(B)	831.608	831.618.
831.613	(b)(2)(ii)(A)	831.607	831.614.
831.613	(b)(2)(ii)(B)	831.607	831.614.
831.613	(b)(4)(ii)	831.618	831.642.
831.613	(c)(1)	831.614	831.641.
831.613	(c)(2)	831.605	831.612.
831.613	(c)(2)	831.612	831.632.
831.613	(c)(2)	831.614	831.641.
831.613	(c)(2)	831.614(c)	831.641(c).
831.614	(a)	831.621	831.682.
831.614	(a)	831.622	831.683.
831.614	(c)(3)	831.613	831.631.
831.619	(b)	831.622 (two occurrences)	831.683.
831.620	(b)(2)(i)	831.622	831.683.
831.621	(e)(3)	831.624	831.665.
831.621	(f)(2)	831.621(b)(4)	Paragraph (b)(4) of this section.
831.621	(l)	831.622	831.683.
831.622	(a)(1)(iv)	831.619(b)	831.643(b).
831.622	(a)(2)(iii)	831.619(b)	831.643(b).
831.622	(c)	831.619(b)	831.643(b).
831.623	(c)(3)	831.624	831.665.
831.624	(a)	831.611	831.622.
831.624	(a)	831.612	831.631.
831.624	(a)	831.613	831.632.
831.624	(a)	831.621	831.682.
831.624	(a)	831.623	831.684.
831.624	(a)	831.628	831.685.
831.624	(b)	831.621	831.682.
831.624	(b)	831.623	831.684.
831.624	(b)	831.621(e)	831.682(e).
831.624	(b)	831.623(c)	831.684(c).
831.624	(c)	831.612	831.631.
831.624	(c)	831.613	831.632.
831.624	(d)	831.612	831.631.
831.624	(d)	831.613	831.632.
831.624	(d)	831.621	831.682.
831.624	(d)	831.623	831.684.
831.624	(e)	831.611	831.622.
831.624	(e)	831.628	831.685.
831.624	(e)	831.629	831.662.
831.626	(a)	831.604	831.611.
831.626	(a)	831.611	831.622.
831.626	(b)	831.604	831.611.
831.626	(b)	831.611	831.622.
831.626	(c)	831.604	831.611.
831.626	(c)	831.611	831.622.
831.628	(a)	831.606	831.613.
831.628	(b)(2)	831.614	831.641.
831.628	(b)(3)(i)	831.629	831.662.
831.628	(b)(5)	831.604	831.611.
831.628	(c)	831.614 (two occurrences)	831.641.
831.629	(only)	831.611(b) (two occurrences)	831.622.
831.629	(only)	831.628 (two occurrences)	831.685.
831.630	(a)	831.625	831.644.
831.630	(b)	831.613	831.631.
831.630	(c)	831.612	831.632.
831.630	(c)	831.621	831.682.
831.701	(d)	831.620	831.651.

Section	Paragraph	Remove	Add
831.2203	(c)	831.608	831.618.
831.2203	(f)	831.607	831.614.
831.2203	(g)	831.605(a) or (b)	831.611(a) or (b).
831.2203	(g)(2)	831.605(a) or (b)	831.611(a) or (b).
838.711	(a)	831.614	831.641.
838.733	(a)(2)	831.604	831.611.
838.733	(a)(2)	831.605	831.612.
838.733	(a)(2)	831.612	831.631.
838.733	(a)(2)	831.613	831.632.
838.921	(a)	831.614	831.641.
838.921	(b)(1)	831.614	831.641.
838.922	(a)	831.614	831.641.
838.1006	(c)(3)	831.614	831.641.
838.1006	(d)(3)	831.607	831.614.
838.1016	(a)	831.614	831.641.
890.803	(a)(3)(ii)	831.621	831.682.
890.803	(a)(3)(ii)	831.622	831.683.
890.803	(a)(3)(iii)	831.622	831.683.
890.805	(a)(2)(i)	831.621	831.682.
890.805	(a)(2)(ii)	831.622	831.683.

6. Section 831.665, is added to read as follows:

§ 831.665 Payment of deposits under § 831.631, § 831.632, § 831.682, or § 831.684 under pre-October 1, 1993, law or when the retiree has died prior to October 1, 1993. [Reserved]

§§ 831.604 through 831.630 [Redesignated]

7. Sections 831.604 through 831.630 are redesignated as follows:

Old section	New section
831.612	831.632.
831.613	831.631.
831.614	831.641.
831.615	831.671.
831.616	831.672.
831.617	831.673.
831.618	831.642.
831.619	831.643.
831.620	831.651.
831.621	831.682.
831.622	831.683.
831.623	831.684.
831.624(a)	831.661.
831.624(b)	831.665.(a)
831.624(c)	831.665.(b)
831.624(d)	831.665.(c)
831.624(e)	[removed]
831.625	831.644.
831.626	831.616.
831.627	831.681.
831.628	831.685.
831.629	831.662.
831.630	831.645.
831.605	831.612.
831.606	831.613.
831.607	831.614.
831.608	831.618.
831.609	831.621.
831.610	831.619.
831.611	831.622.
831.604	831.611.

Subpart F—Survivor Elections and Annuities

8. Subpart F is amended by removing and reserving §§ 831.615 and 831.617 and adding an undesignated centerheading immediately before the section listed in the left column as follows:

Section	Undesignated centerheading
831.601	Organization and Structure of Regulations on Survivor Annuities.
831.611	Elections at the Time of Retirement.
831.621	Changes of Survivor Elections.
831.631	Post-Retirement Elections.
831.641	Eligibility.
831.651	Payment of Survivor Annuities.
831.661	Survivor Election Deposits.
831.671	Children's Annuities.
831.681	Regulations Pertaining to Noncodified Statutes.

9. In newly redesignated § 831.661, the section heading is revised to read as follows:

§ 831.661 Deposits not subject to waiver.

10. In newly redesignated § 831.662, the section heading is revised to read as follows:

§ 831.662 Deposits required to change an election after final adjudication.

11. Section 831.663 is added to read as follows:

§ 831.663 Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631 or § 831.632 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on the same date as the annuity reduction under § 831.631 or § 831.632.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the deposit under § 831.631 or § 831.632 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (c) of this section (plus any previous reduction(s) in the retiree's annuity required under this section § 831.664); or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction under paragraph (c) of this section.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25

percent of the rate of the reinstated or new self-only annuity).

12. Section 831.664 is added to read as follows:

§ 831.664 Post-retirement survivor election deposits that were partially paid before October 1, 1993.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631, § 831.632, § 831.682, or § 831.684 and have paid some portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on October 1, 1993.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjustment reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM; BASIC ANNUITY

13. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

14. Section 842.602 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 842.602 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

15. In § 842.615, paragraph (d) is added and the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 842.615 Deposits required.

* * * * *

(b) *Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.* (1) The annuity reduction required by paragraph (b)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (b)(1) of this section must have a permanent annuity reduction computed under paragraph (b)(4) of this section.

(3) A reduction under paragraph (b)(2) of this section commences on the same date as the annuity reduction under § 842.611 or § 842.612.

(4) The annuity reduction under paragraph (b)(2) of this section is equal to the lesser of—

(i) The amount of the deposit under § 842.611 or § 842.612 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (b)(3) of this section (plus any previous reduction(s) in the retiree's annuity required under paragraph (b)(2) or (c)(2) of this section); or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction (under paragraph (b)(3) of this section).

(5) (i) The reduction under paragraph (b)(2) or paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(c) *Post-retirement survivor election deposits that were partially paid before October 1, 1993.* (1) The annuity reduction required by paragraph (c)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have paid any portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (c)(1) of this section must have a permanent annuity reduction computed under paragraph (c)(4) of this section.

(3) A reduction under paragraph (c)(2) of this section commences on October 1, 1993.

(4) The annuity reduction under paragraph (c)(2) of this section is equal to the lesser of—

(i) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(5) (i) The reduction under paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(d) For retirees who die before October 1, 1993, any unpaid portion of the deposit required under § 842.611 or § 842.612 will be collected from the survivor annuity (for which the election required the deposit) before OPM pays any survivor annuity.

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DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

RIN 0590–AA07

Regulations and Policy Statements Under the Packers and Stockyards Act: Trade Practices, Scale Test Instructions, Advertising Allowance Guidelines

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: Proposed amendments to rules issued under the Packers and Stockyards (P&S) Act (7 U.S.C. 181 *et seq.*) were published in the **Federal Register** (57 FR 45005) on September 30, 1992. This document adopts proposed changes which amend one regulation by lessening restrictions on market agencies selling on commission and amends a statement of general policy to provide greater clarity concerning guidelines for advertising allowances and other promotional programs offered by meat packers. Proposed changes which remove 6 regulations are also being adopted. Four of these regulations provide outdated procedures for testing scales subject to the P&S Act and the other concern selling agencies providing price guarantees and their ability to employ certain individuals. Seven other regulations and a statement of general policy will be retained in their present form as set forth in the proposal at 57 FR 45006.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 720–6951, or Kenneth Stricklin, Director, Packer and Poultry Division, (202) 720–7363.

SUPPLEMENTARY INFORMATION: In response to the proposal published in the **Federal Register** (57 FR 45005), the Agency received a total of 13 comments. Comments were received from five livestock producer trade associations, five individuals and groups representing livestock marketing interest, one meat trade association, and the other two were from poultry grower and processor trade associations.

Nine comments were received concerning removal of § 201.64 concerning price guarantees by market agencies selling livestock on a commission basis. Four comments from livestock producer trade associations, including two national associations, and two from associations representing cooperative livestock markets support removal of this regulation. While three of these comments provide general support for all the proposals, one comment from a national association representing livestock producers and the two comments from cooperative marketing interests specifically assert removal of this regulation will help selling agencies compete more effectively and benefit livestock producers. Three comments from marketing interests object to removal of § 201.64 because they believe its removal could, in the long term, weaken market agencies selling on commission and actually lead to less competition.

Removal of § 201.64 of the regulations will permit selling agencies to compete more effectively with other types of marketing businesses which are not affected by this regulation. If price guarantees, which have been prohibited by this regulation, are offered in a manner that is unjustly discriminatory, restrict competition, or have the effect of creating an unfair competitive environment, the Agency has authority to address specific problems on a case-by-case basis under the provisions of the P&S Act. Further, structural changes in the livestock marketing industry have altered the importance of § 201.64 since market agencies selling on commission are only one of several marketing alternatives available to most livestock sellers today. Other Alternatives include packer and dealer buying stations and direct purchases by packers, dealers, and producers.

Six comments were received concerning the proposed removal of § 201.66 and all generally supported removal. This regulation was intended to prohibit less than arm's length transactions between a packer and selling agency, thereby avoiding any conflict of interest. While this regulation eliminates a potential conflict of interest, it also restricts potential buying power. Since dealers and order buyers are permitted to be employed by a selling agency, except in key positions, we can see no viable reason to continue to exclude packer employees from employment by a selling agency under similar circumstances. Concerns regarding potential conflicts of interest are addressed under § 201.56 by restricting employment in specific key positions. Further, provisions of the P&S Act which prohibit unfair and deceptive practices would make any unfair advantage gained from such employment unlawful.

Sections 201.72–1. 201.78–1, 201.106–1, and 201.106–2, which provided detailed instructions for testing scales subject to the P&S Act, will be removed as proposed. These regulations are outdated and, in some instances, in conflict with current testing requirements as set forth in the National Bureau of Standards (now National Institute of Standards and Technology) Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices" which has been incorporated in § 201.71. All six of the comments which address these regulations supported their removal.

As proposed, § 201.56 will be amended to permit selling agencies, their owners, officers, agents, and employees (except specified key employees) to purchase livestock out of consignment for any purpose provided the livestock is first offered for sale in an open, competitive manner to other available buyers. This proposal limits the definition of key employees to the auctioneer, weighmaster, and private treaty or commission salesman. Such key employees will be prohibited from purchasing livestock out of consignment for any purpose for their own account. This change will permit selling agencies to market livestock in a manner that best represents the interest of the livestock seller and provide greater flexibility for market mechanisms to work.

Nine comments were received which addressed the proposed amendments to § 201.56. All support the proposed changes. One comment from a national association representing livestock markets suggests the term "Salesman" be clarified to state clearly it applies to

persons who actually take bids at a particular sale, rather than a fieldman. The language being adopted herein is limited to a prohibition against purchases from consignment by salesmen and other specified key employees, and the Agency affirms there is no intent to include fieldmen who are not engaged in accepting bids on consigned livestock.

The Agency received four comments on its proposed changes to policy statement 203.14. Three of the comments generally supported the recommended changes and one opposed them. The opposing comment expresses concern that the proposed changes will have a substantial economic effect on the small entities. The concern is that larger processors will be given increased license to use advertising and other allowances to freeze out competition from small producers who do not have the financial resources to compete on an even playing field with large national marketers. Further, the comment states, in effect, that unless the guidelines are absolutely compulsory in their application and compliance, it is likely that they may stifle competition.

This policy statement was issued to provide guidelines to the meat packing industry in complying with the provisions of the P&S Act when furnishing advertising and allowances to competing customers. The guidelines were not written to cover every promotional activity offered by every packer and are advisory in nature and do not have the full force and effect of law (thus the use of "should" rather than "must"). The intent of the guidelines is to assure that small processors are not put at a competitive disadvantage by discriminatory promotional activity of larger processors. Any advertising or allowance activity which is not in conformity with the guidelines and violates the P&S Act will be investigated by the Agency in a timely manner and appropriate action taken.

After considering the comments, the Agency has determined that several of the examples used in the guidelines should be eliminated, as proposed, to provide clarity and user friendliness. By doing so the Agency will be consistent with the Federal Trade Commission which amended its guidelines in August 1990 by eliminating several examples of how to implement promotional programs.

As proposed, each of the following regulations and statements of general policy will be retained in their present form:

201.11 Suspended registrants, officers, agents, and employees.
201.42 Custodial accounts for trust funds.
201.43 Payment and accounting for livestock and live poultry.
201.67 Packers not to own or finance selling agencies.
201.72 Scales; testing of.
201.97 Annual reports.
201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or grade and weight basis.
203.10 Statement with respect to insolvency, definition of current assets and current liabilities.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

The comments received generally support retaining each of these regulations. However, some individual comments offered suggestions on specific sections. Three comments suggested § 201.11 be amended to deny registration to any applicant for registration with a prior conviction for fraud, theft, or embezzlement and another wanted to limit suspensions to specific circumstances. Since this regulation applies to registrants that have already been suspended, these suggestions need to be considered under § 201.10 which is still being reviewed. Two comments recommended a statutory dealer trust be incorporated into § 201.42 which requires selling agencies to maintain custodial accounts. A statutory dealer trust would require legislation amending the P&S Act. Another comment suggests this regulation be amended to permit items added to the buyer's invoice to be paid directly from the custodial account. The Agency believes this regulation already provides sufficient latitude to permit incidental charges that are directly related to a transaction to be paid from the custodial account when the charge is included in the buyer's payment and deposited directly into the custodial account.

One comment proposed amendments to § 201.43 to prohibit coercion or intimidation to dictate the terms or manner of payment on a poultry growing arrangement and to add recordkeeping requirements for live poultry dealers. Sections 401 and 410 of the P&S Act (7 U.S.C. 221 and 228b–1) provide recordkeeping and payment requirements for live poultry dealers. The Agency believes these provisions are adequate to address the concerns expressed in this comment.

Two comments recommended § 201.67 be amended to prohibit packers from owning or financing a selling agency only in those instances where it leads to anticompetitive behavior. Since this is an advisory regulation, the practical effect of the regulation is consistent with this recommendation. One comment recommended § 201.72 be amended to include scale testing requirements for scales used to weigh poultry feed distributed under a poultry growing arrangement. No changes are being adopted in § 201.72 at this time. This recommendation would require further study and consideration in light of current legislative authority before any changes could be proposed. One comment opposes retaining the annual report requirements of § 201.97 for live poultry dealers. The financial information furnished in these reports is crucial in administering the poultry payment and trust provisions of the P&S Act. It provides the necessary data for evaluation of the financial stability of each firm and, consequently, the ability of each to make prompt payment for live poultry.

One comment recommended § 201.99 be amended to establish uniform purchasing requirements for all packers purchasing livestock on a carcass basis. The Agency is responsible for ensuring that a packer's purchasing procedures do not result in any unfair, deceptive, or discriminatory practices; however, this does not include establishing uniform purchasing or marketing programs for the industry.

Two comments suggest the principal test for solvency set forth in § 203.10 should be whether a person can pay his/her obligations as they come due, not whether he/she has enough current assets to meet all obligations during the next 12 months. These comments do not accurately describe the principal test for insolvency defined in § 203.10 which is that current assets be at least equal to current liabilities. Obligations which may come due within 1 year, but have not yet been incurred, such as utilities, wages, etc., are not considered current liabilities. The issue to be addressed is whether an entity has the ability to meet its day-to-day obligations. In our experience, the current asset/liability ration is the best measure of that ability.

The changes in §§ 201.56 and 203.14 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As approved by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of these rules is to remove restrictions which will provide greater flexibility for market mechanisms to work and provide clarity and consistency with other regulations and guidelines. Although the primary effect is to remove restrictions, the changes further restrict purchases by auctioneers, salesmen, and weighmasters to eliminate conflicts of interest in fulfilling their fiduciary responsibilities in consignment transactions.

These amendments to rules are not major rules for the purposes of E.O. 12291. The amendments do not impose any new paperwork requirements; do not have implications of Federalism under the Criteria of E.O. 12612; and do not impact on family formation under the Criteria of E.O. 12606.

These amendments to rules have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. The six amendments will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with these amendments. Prior to judicial challenge of the amendments to rules, a party must be first found by the Secretary to be in violation of the P&S Act and in violation of the regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Parts 201 and 203

Advertising allowances, Market agency employees, Price guarantees, Purchases from consignment, Scale test instructions.

Done at Washington, DC, this 6th day of October 1993.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

For reasons set forth in the preamble, the Packers and Stockyards Administration will amend 9 CFR parts 201 and 203 as follows:

1. The authority citation for parts 201 and 203 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 256.

PART 201—[AMENDED]

2. Remove § 201.64.

3. Remove § 201.66.

4. Remove § 201.72–1.

5. Remove § 201.78–1.

6. Remove § 201.106–1.

7. Remove § 201.106–2

8. Section 201.56 is amended by revising paragraphs (b), (c), and (d), and by removing paragraph (e).

§ 201.56 Market agencies selling on commission, purchases from consignment.

* * * * *

(b) *Purchases from consignment.* No market agency engaged in the business of selling livestock on a commission basis shall purchase livestock from consignments, and no such market agency shall permit its owners, officers, agents, employees or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock consigned to such market agency, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Key employees not to purchase livestock out of consignments.* No market agency engaged in selling livestock on commission shall permit its auctioneers, weighmasters, or salesmen to purchase livestock out of consignment for any purpose for their own account, either directly or indirectly.

(d) *Purchase from consignments; disclosure required.* When a market agency purchases consigned livestock or sells consigned livestock to any owner, officer, agent, employee, or any business in which such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose on the account of sale the name of the buyer and the nature of the relationship existing between the market agency and the buyer.

(Approved by the Office of Management and Budget under control number 0590–0001.)

9. Section 203.14 is revised to read as follows:

§ 203.14 Statement with respect to advertising allowances and other merchandising payments and services.

The Guidelines

1. *Who is a customer?* (a) A *customer* is a person who buys for resale directly from the packer, or through the packer's agent or broker; and in addition, a customer is any buyer of the packer's product for resale who purchases from or through a wholesaler or other intermediate reseller.

(**Note:** In determining whether a packer has fulfilled its obligations toward its customers, the Packers and Stockyards Administration will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers or one who makes only sporadic purchases, or one who does not regularly sell the packer's product or who is a type of retail outlet not usually selling such products will not be considered a "customer" of the packer unless the packer has been put on notice that such retailer is selling its product.)

(b) *Competing customers* are all businesses that compete in the resale of the packer's products of like grade and quality at the same functional level of distribution, regardless of whether they purchase direct from the packer or through some intermediary.

Example: A packer sells directly to some independent retailers, sells to the headquarters of chains and of retailer-owned cooperatives, and also sells to wholesalers. The direct-buying independent retailers, the headquarters of chains and of retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the packer. Individual retail outlets which are part of the chains or members of the retailer-owned cooperatives are not customers of the packer.

2. *Definition of services. Services* are any kind of advertising or promotion of a packer's product, including but not limited to, cooperative advertising, handbills, window and floor displays, demonstrators and demonstrations, customer coupons, and point of purchase activity.

3. *Need for a plan.* If a packer makes payments or furnishes services, it should do so under a plan that meets several requirements. If there are many competing customers to be considered, or if the plan is at all complex, the packer would be well advised to put its plan in writing. The requirements are:

(a) Proportionally equal terms—The payments or services under the plan should be made available to all competing customers on proportionally equal terms. This means that payments or services should be made proportionately on some basis that is fair to all customers who compete in the resale of the packer's products. No single way to achieve the proper proportion is prescribed, and any method that treats completing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services

furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

Example 1: A packer may properly offer to pay a specified part (say 50 percent) of the cost of local advertising up to an amount equal to a set percentage (such as 5 percent) of the dollar volume of such purchases during a specified time.

Example 2: A packer may properly place in reserve for each customer a specified amount of money of each unit purchased and use it to reimburse those customers for the cost of advertising and promoting the packer's product during a specified time.

Example 3: A packer's plan should not provide an allowance on a basis that has rates graduated with the amount of goods purchased, as for instance, 1 percent of the first $1,000 purchases per month, 2 percent on second $1,000 per month, and 3 percent on all over that.

(b) Packer's duty to inform—The packer should take reasonable action, in good faith, to inform all its competing customers of the availability of its promotional program. Such notification should include all the relevant details of the offer in time to enable customers to make an informed judgment whether to participate. Where such one-step notification is impracticable, the packer may, in lieu thereof, maintain a continuing program of first notifying all competing customers of the types of promotions offered by the packer and a specific source for the customer to contact in order to receive full and timely notice of all relevant details of the packer's promotions. Such notice should also inform all competing customers that the packer offers advertising allowances and/or other promotional assistance that are usable in a practical business sense by all retailers regardless of size. When a customer indicates its desire to be put on the notification list, the packer should keep that customer advised of all promotions available in its area as long as the customer so desires. The packer may make the required notification by any means it chooses; but in order to show later that it gave notice to a certain customer, it is in a better position to do so if it was given in writing or a record was prepared at the time of notification showing date, person notified, and contents of notification.

If more direct methods of notification are impracticable, a packer may employ one or more of the following methods, the sufficiency of which will depend upon the complexity of its own distribution system. Different packers may find that different notification methods are most effective for them:

(1) The packer may enter into contracts with its wholesaler, distributors or other third parties which conform to the requirements of item 5, infra.

(2) The packer may place appropriate announcements on product containers or inside thereof with conspicuous notice of such enclosure on the outside.

(3) The packer may publish notice of the availability and essential features of a promotional plan in a publication of general distribution in the trade.

Example 1: A packer has a wholesaler-oriented plan directed to wholesalers distributing its products to retailing customers. It should notify all the competing wholesalers distributing its products of the availability of this plan, but the packer is not required to notify retailing customers.

Example 2: A packer who sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the packer directly notifies not only all competing direct purchasing retailers but also all competing retailers purchasing through the wholesalers as to the availability, terms and conditions of the plan, the packer is not required to notify its wholesalers.

Example 3: A packer regularly engages in promotional programs and the competing customers include large direct purchasing retailers and smaller customers who purchase through wholesalers. The packer may encourage, but not coerce, the retailer purchasing through a wholesaler to designate a wholesaler as its agent for receiving notice of, collecting, and using promotional allowances for the customer. If a wholesaler or other intermediary by written agreement with a retailer is actually authorized to collect promotional payments from suppliers, the packer may assume that notice of and payment under a promotional plan to such wholesaler or intermediary constitutes notice and payment to the retailer.

(A packer should not rely on a written agreement authorizing an intermediary to receive notice of and/or payment under a promotional plan for a retailer if the packer knows, or should know, that the retailer was coerced into signing the agreement. In addition, a packer should assume that an intermediary is not authorized to receive notice of and/or payment under a promotional plan for a retailer unless there is a written authorization signed by such retailer.)

(c) Availability to all competing customers—The plan should be such that all types of competing customers may participate. It should not be tailored to favor or discriminate against a particular customer or class of customers but should, in its terms, be usable in a practical business sense by all competing customers. This may require offering all such customers more than one way to participate in the plan or offering alternative terms and conditions to customers for whom the basic plan is not usable and suitable. The packer should not, either expressly or by the way the plan operates, eliminate some competing customers, although it may offer alternative plans designed for different customer classes. If it offers alternative plans, all of the plans offered should provide the same proportionate equality and the packer should inform competing customers of the various alternative plans.

When a packer, in good faith, offers a basic plan, including alternatives, which is reasonably fair and nondiscriminatory and refrains from taking any steps which would prevent any customer, or class of customers, from participating in its program, it shall be deemed to have satisfied its obligation to make its plan functionally available to all customers, and the failure of any customer or customers to participate in the program shall not be deemed to place the packer in violation of the provisions of the Packers and Stockyards Act.

Example 1: A packer offers a plan of short term store displays of varying sizes, including some which are suitable for each of its competing customers and at the same time are small enough so that each customer may make use of the promotion in a practical business sense. The plan also calls for uniform, reasonable certification of performance by the retailer. Because they are reluctant to process a reasonable amount of paperwork, some small retailers do not participate. This fact is not deemed to place a packer in violation of Item 3(c) and it is under no obligation to provide additional alternatives.

Example 2: A packer offers a plan for cooperative advertising on radio, television, or in newspapers of general circulation.[1] Because the purchases of some of its customers are too small, this offer is not "functionally available" to them. The packer should offer them alternative(s) on proportionally equal terms that are usable by them and suitable for their business.

(d) Need to understand terms—In informing customers of the details of a plan, the packer should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or services furnished.

(e) Checking customer's use of payments—The packer should take reasonable precautions to see that services it is paying for are furnished and also that it is not overpaying for them. Moreover, the customer should expend the allowance solely for the purpose for which it was given. If the packer knows or should know that what it pays or furnishes is not being properly used by some customers, the improper payments or services should be discontinued.[2]

A packer who, in good faith, takes reasonable and prudent measures to verify the performance of its competing customers will be deemed to have satisfied its obligations under the Act. Also, a packer who, in good faith, concludes a promotional agreement with wholesalers or other intermediaries and who otherwise conforms to the standards of Item 5 shall be deemed to have satisfied this obligation. If a packer has taken such steps, the fact that a particular customer has retained an allowance in excess of the cost, or approximate cost if the actual cost is not known, of services performed by the customer shall not alone be deemed to place a packer in violation of the Act.

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[1] In order to avoid the tailoring of promotional programs that discriminate against particular customers or class of customers, the packer in offering to pay allowances for newspaper advertising should offer to pay the same percentage of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second class mail privileges.

[2] The granting of allowances or payments that have little or no relationship to cost or approximate cost of the service provided by the retailer may be considered a violation of section 202 of the Act.

(When customers may have different but closely related costs in furnishing services that are difficult to determine such as the cost for distributing coupons from a bulletin board or using a window banner, the packer may furnish to each customer the same payment if it has a reasonable relationship to the cost of providing the service or is not grossly in excess thereof.)

4. *Competing customers.* The packer is required to provide in its plan only for those customers who compete with each other in the resale of the packer's products of like grade and quality. Therefore a packer should make available to all competing wholesalers any plan providing promotional payments or services to wholesalers, and similarly should make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a packer can limit the area of its promotion. However, this section is not intended to deal with the question of a packer's liability for use of an area promotion where the effect may be to injure the packer's competition.

5. *Wholesaler or third party performance of packer's obligations.* A packer may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the packer's obligations under this part. However, the interposition of intermediaries between the packer and its customers does not relieve the packer of its ultimate responsibility of compliance with the provisions of the Packers and Stockyards Act. The packer, in order to demonstrate its good faith effort to discharge its obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the packer's customers in conformity with the standards set forth in items 3(b) and (d), supra;

(2) Check customer performance in conformity with the standards set forth in item 3(e), supra;

(3) Implement the plan in a manner which will insure its functional availability to the packer's customers in conformity with the standards set forth in item 3(c), supra (This must be done whether the plan is one devised by the packer itself or by the intermediary for use by the packer's customers.); and

(4) Provide certification in writing and at reasonable intervals that the packer's customers have been and are being treated in conformity with the agreement.

A packer who negotiates such agreements with its wholesalers, distributors or third party promoters will be considered by the Administration to have justified its "good faith" obligations under this section only if it accompanies such agreements with the following supplementary measures: At regular intervals the packer takes affirmative steps to verify that its customers are receiving the proportionally equal treatment to which they are entitled by making spot checks designed to reach a representative cross section of its customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that its customers are receiving such proportionally equal treatment, the packer takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Intermediaries, subject to the Packers and Stockyards Act, administering promotional assistance programs on behalf of a packer may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer's obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer's competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. *Customer's liability.* A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer's products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer's advertising plan by billing the packer at "vendor rates" or for any other amount in excess of that authorized in the packer's promotion program.

7. *Meeting competition.* A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery.

(Approved by the Office of Management and Budget under control number 0590–0001)

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (58 FR 48780, September 20, 1993) that amended the regulations updating the existing accounting and reporting requirements, promoting consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensuring that the regulatory requirements and standards remain consistent with those of generally accepted accounting principles. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: The regulations shall become effective on December 31, 1993 or upon the expiration of 30 days after publication, during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the Federal Register, a typographical error was inadvertently made in the second sentence of § 621.20(b)(3). Accordingly, FR Doc. 93–22525, published September 20, 1993, is amended as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 [Corrected]

1. On page 48790, first column, twentieth line from the bottom, paragraph (b)(3) of § 621.20 is corrected by removing the reference "§ 621.11" and adding in its place, the reference "§ 621.12".