

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831 and 842

RIN 3206-AG10

#### Termination of Survivor Annuity Entitlement Based on Remarriage Before Age 55

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations concerning survivor annuity entitlement under the Civil Service Retirement System and Federal Employees Retirement System. The regulations facilitate qualification for a current spouse survivor annuity in certain cases involving a former spouse's remarriage to a retiree. The regulations also limit the scope of the current regulations prohibiting reinstatement of a former spouse survivor annuity after an annulment. The regulations are necessary to implement the basic purpose of the statute.

**EFFECTIVE DATE:** April 17, 1995.

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

**SUPPLEMENTARY INFORMATION:** On August 15, 1994, we published (at 59 FR 41716) proposed regulations to facilitate qualification for a current spouse survivor annuity in certain cases involving a former spouse's remarriage to a retiree and to limit the scope of the current regulations prohibiting reinstatement of a former spouse survivor annuity after an annulment. We received one comment that relates to the former spouse annulment issue. We address the comment in our discussion of that issue.

Under sections 8341(h)(3)(B) and 8445(c)(2) of title 5, United States Code,

a former spouse's survivor annuity entitlement terminates if the former spouse remarries before age 55. In a recent case, a retiree's former spouse was eligible for a survivor annuity, but she remarried the retiree before she reached age 55. They remarried to make sure the former spouse would get a survivor annuity. The retiree died 1 month after the remarriage without notifying OPM and the survivor reduction in the retiree's annuity continued until his death. The retiree, assuming the remarriage would assure his wife's future, died without having filed a written election to provide a survivor annuity for her. (See 5 U.S.C. 8339(j)(5)(B) and 8419(b)(2)(C).) In our adjudication of this case, we decided to construe the statute so that the widow's pre-age 55 remarriage to the retiree under these circumstances does not disqualify her. To interpret the law to prevent her from receiving a survivor annuity would produce an unconscionable result that Congress never intended. Accordingly, we decided to issue regulations to adopt a more reasonable approach to this situation. Under these regulations, when a retiree remarries a former spouse who would be entitled, if not for the remarriage, to a former spouse survivor annuity based on the retiree's service, and the retiree takes no action to terminate the annuity reduction, we will deem the retiree to have elected to continue the reduction to provide a current spouse annuity under section 8339(j)(5)(B)(iii) or section 8419(b)(2)(C) of title 5, United States Code. We will deem the election to have occurred whether the former spouse's entitlement was based on the retiree's election or on a court order. Of course, an election will not be deemed if the retiree, in writing, asks OPM to stop the reduction either before or after the remarriage.

The new regulations also clarify the scope of the current regulations concerning reinstatement of a former spouse survivor annuity entitlement after an annulment. Our current regulations provide that a former spouse's entitlement will not be reinstated even if it ended due to a remarriage that is later determined to be invalid and is annulled. The comment that we received on the proposed regulations expressed the belief that, when a void marriage is annulled *ab*

*initio*, we should act as though the marriage never occurred.

The rationale for our approach is based on the State courts' treatment of remarriage for alimony purposes. Generally, the courts will not allow alimony to be reinstated when the remarriage is annulled because the payer of the alimony is allowed to rely on the act of remarriage (regardless of validity) to plan for the future without the alimony obligation. See 55 FR 9094, March 12, 1990 (addressing similar comments in connection with the original issuance of the current regulation). The only purpose of our proposed rule was to clarify that the current regulation does not apply to a very small class of cases for which the alimony analogy is inapposite.

Our alimony analogy does not fit cases in which the former spouse's entitlement is not related to any reduction in the retiree's annuity. Section 4(b)(1)(B) and 4(b)(4) of the Civil Service Retirement Spouse Equity Act of 1984, as amended, provide survivor annuity benefits to former spouses who meet certain criteria, without requiring a reduction in a retiree's benefit. We proposed and are now amending section 831.644(d) of Title 5, Code of Federal Regulations, to allow reinstatement of entitlements based on section 4(b)(1)(B) and 4(b)(4) of the Civil Service Retirement Spouse Equity Act of 1984, as amended, if the remarriage before age 55 is later found to be invalid from its inception. The alimony analogy continues to fit—and therefore we will not reinstate the former spouse's entitlement following an annulment—in any situation in which a reduction in the employee annuity is required to provide the former spouse survivor annuity.

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

#### List of Subjects in 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.

U.S. Office of Personnel Management.

**Lorraine A. Green,**  
Deputy Director.

Accordingly, OPM is amending subpart F of 5 CFR part 831 and subpart F of 5 CFR part 842, as follows:

**PART 831—RETIREMENT**

1. The authority citation for 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); § 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.; § 831.621 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. 834(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.

**Subpart F—Survivor Annuities**

2. In section 831.644, paragraph (d) is revised to read as follows:

**§ 831.644 Remarriage.**

\* \* \* \* \*

(d) (1) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon termination of the remarriage by death or divorce.

(2) If present or future entitlement to a former spouse annuity is terminated because of remarriage before age 55, the entitlement will not be reinstated upon annulment of the remarriage unless—

(i) The decree of annulment states that the marriage is without legal effect retroactively from the marriage's inception; and

(ii) The former spouse's entitlement is based on section 4(b)(1)(B) or section 4(b)(4) of Pub. L. 98-615.

(3) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to

continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

**PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY**

3. 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.

**Subpart F—Survivor Elections**

4. In section 842.612, paragraph (h) is added to read as follows:

**§ 842.612 Post-retirement election of a fully reduced annuity or one-half reduced annuity to provide a current spouse annuity.**

\* \* \* \* \*

(h) If a retiree who is receiving a reduced annuity to provide a former spouse annuity and who has remarried that former spouse (before the former spouse attained age 55) dies, the retiree will be deemed to have elected to continue the reduction to provide a current spouse annuity unless the retiree requests (or has requested) in writing that OPM terminate the reduction.

[FR Doc. 95-6508 Filed 3-15-95; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Parts 300 and 319**

[Docket No. 94-036-2]

**Importation of Fruits and Vegetables**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

**EFFECTIVE DATE:** March 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, Maryland 20737-1228; (301) 734-8645.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On October 25, 1994, we published in the **Federal Register** (59 FR 53606-53612, Docket No. 94-036-1) a proposal to amend the regulations by allowing additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the