

# Proposed Rules

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 880

RIN 3206-AH75

#### Retirement and Insurance Benefits When an Annuitant Is Missing

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations to establish a uniform standard that OPM will use in its administration of retirement and insurance benefits in cases in which an annuitant disappears. These regulations would establish procedures to determine the status of the missing annuitant and to allow the missing annuitant's dependents to obtain benefits until the missing annuitant's status is resolved.

**DATES:** Comments must be received on or before September 2, 1997.

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

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

**SUPPLEMENTARY INFORMATION:** These regulations are intended to establish OPM's procedures for making payments of annuity during a period when an annuitant is missing and until the annuitant is either found or officially determined to have died. The regulations are aimed at providing continuing support to the family of a missing annuitant, while balancing the interest of the Government in protecting the retirement system from unwarranted disbursements.

These cases are uncommon, but about once a year a case arises under Civil Service Retirement System (CSRS) or

Federal Employees Retirement System (FERS) in which an annuitant disappears. In some cases, the circumstances of the disappearance are such that local authorities are able to declare the missing annuitant legally dead (e.g., victims of a plane crash with no survivors but bodies are not identifiable) and we are able to begin survivor benefit payments to the affected families, but, in other cases, a long waiting period is required before a missing annuitant can be declared legally dead. However, over the years, our experience has been that such missing individuals are not found alive. Accordingly, the proposed regulations would provide for continuing payment of the amount that would be payable as survivor annuity if the missing annuitant were dead.

Subpart A contains information of a general nature, including a description of the type of case covered by the regulations, cross references to related regulations, and definitions of terms used in the regulations. Section 880.101 limits the scope of these regulations to cases involving the disappearance of individuals who are already retired.

In the case of disappearance of a separated employee who has not applied for annuity, we have no authority to pay an employee annuity, as determined by the United States Court of Appeals for the Federal Circuit in the case of *Oshiver v. Office of Personnel Management*, 896 F.2d 540 (Fed. Cir. 1990). The court found that no payments can be made until the individual personally files an application. Accordingly, section 880.101 excludes from the coverage of the regulations any case in which the former employee has not applied for retirement.

Section 880.102 is a research aid providing references to related regulations.

Section 880.103 defines terms used in this part.

Subpart B establishes the procedures that we will follow in missing annuitant cases. Section 880.202 establishes that the Retirement and Insurance Service is the component of OPM that will receive and act on any missing annuitant report.

Section 880.203 establishes the procedure that OPM will follow to determine that a retiree is missing and assigns to the Retirement and Insurance Service the responsibility for

suspending payment and providing notice to affected individuals. That section also specifies the types of information that the affected individual will receive in the suspension notice.

Section 880.204 provides for retroactive restoration of the annuity and an offset for any disbursements made during the disappearance, in the event that the annuitant is found. That section also provides that we will consider issues of competency of the previously missing annuitant and if necessary require a representative payee be appointed before restoring the annuity.

Section 880.205 establishes the standard of evidence required to prove the death of a missing annuitant before we will authorize any form of lump-sum death benefits under CSRS or FERS or a life insurance payment. Although in routine CSRS and FERS death cases we accept other forms of evidence to establish the death of an annuitant, in missing annuitant cases before paying any lump-sum death benefit or life insurance, we will require documentary evidence that an official with legal authority to make determinations that an individual is legally dead has made such a determination for the missing annuitant. The individual claiming that the missing annuitant is dead has the burden of proving that the official determining death is authorized to make such determinations. We expect that such proof will generally consist of appropriate State or other official documents authorizing the official to make such determinations.

Section 880.206 establishes a uniform date of death for the cases covered by these regulations. This rule is needed to prevent unjustified variations in benefits depending on local law. Under these regulations, the date of disappearance will be used as the date of presumed death.

Section 880.207 establishes that we will review each missing annuitant case after a determination of death to make certain that the proper benefits have been paid and premiums collected consistent with the date of death established under section 880.206.

Subpart C establishes the methodology that we will use to determine benefit levels while the annuitant is missing. Section 880.302 provides for payment of CSRS and FERS survivor annuity as though the missing

annuitant were dead. In the usual missing annuitant case, the effect of this rule is that the spouse will be paid at the survivor rate—55 percent (CSRS) or 50 percent (FERS) of the missing annuitant's benefit. However, if the missing annuitant had children who would be eligible for a survivor annuity, we would make payments at the child annuity rate as well. Also, if a former spouse has been receiving a portion of the annuitant's monthly benefit in accordance with a court order, that payment to the former spouse would be suspended under rules that would normally apply when an annuitant's payments are suspended. See 5 CFR 838.323. If a former spouse would be entitled to the survivor annuity, upon the missing annuitant's death, we will pay the former spouse an amount equal to that survivor annuity.

Section 880.303 establishes that family health benefits coverage continues while the annuitant is missing if there is more than one eligible family member, and that the enrollment is transferred to an eligible family member. If there is only one eligible family member, the enrollment is changed to self only and transferred to that family member. If the missing annuitant has a self-only enrollment, the enrollment terminates. If the missing annuitant is later found to be alive, the original enrollment is reinstated upon the annuitant's reappearance unless the annuitant or his or her representative requests that it be restored retroactively to the time of the disappearance.

Section 880.304 establishes that life insurance premiums will not be collected while the annuitant is missing. If the annuitant is located, back premiums will be collected. If not, the suspension of premiums will be permanent because the annuitant is deemed to have died on the date of disappearance.

#### 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 and insurance benefits of retired Government employees and their survivors.

#### List of Subjects in 5 CFR Part 880

Administrative practice and procedure, Government employees, Health insurance, Hostages, Life insurance, Pensions, Retirement.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM proposes to amend 5 CFR as follows:

1. Part 880 is added to read as follows:

### **PART 880—RETIREMENT AND INSURANCE BENEFITS DURING PERIODS OF UNEXPLAINED ABSENCE**

#### **Subpart A—General**

Sec.

- 880.101 Purpose and scope.
- 880.102 Regulatory structure.
- 880.103 Definitions.

#### **Subpart B—Procedures**

- 880.201 Purpose and scope.
- 880.202 Referral to Associate Director.
- 880.203 Missing annuitant status and suspension of annuity.
- 880.204 Restoration of annuity.
- 880.205 Determinations of death.
- 880.206 Date of death.
- 880.207 Adjustment of accounts after finding of death.

#### **Subpart C—Continuation of Benefits**

- 880.301 Purpose.
- 880.302 Payments of CSRS or FERS benefits.
- 880.303 FEHBP coverage.
- 880.304 FEGLI coverage.

**Authority:** 5 U.S.C. 8347(a), 8461(g), 8716, 8913.

#### **Subpart A—General**

##### **§ 880.101 Purpose and scope.**

(a) The purpose of this part is to establish a uniform standard that OPM will use in its administration of benefits for CSRS, FERS, FEHBP and FEGLI in cases in which an annuitant becomes a missing annuitant.

(b) This part establishes the procedures that OPM will follow to—

- (1) Determine—
  - (i) Who is a missing annuitant,
  - (ii) When a missing annuitant has died,
  - (iii) When benefits will be paid in missing annuitant cases, and
  - (iv) FEHBP coverage for family members of a missing annuitant; and
- (2) Make adjustments to CSRS and FERS benefit payments, FEHBP coverage and premiums, and FEGLI benefit payments and premiums after a determination that a missing annuitant is dead.

(c) This part applies only to situations in which an individual who satisfies the statutory definition of an annuitant under section 8331(9) or section 8401(2) of title 5, United States Code, disappears and has not been determined to be dead by an authorized institution. This part does not apply to—

(1) An employee, regardless of whether the absence is covered by subchapter VII of chapter 55 of title 5, United States Code; or

(2) A separated employee who either—

- (i) Does not meet the age and service requirements for an annuity, or
- (ii) Has not filed an application for annuity.

#### **§ 880.102 Regulatory structure.**

(a) This part contains the following subparts:

(1) Subpart A contains general information about this part and related subjects.

(2) Subpart B establishes the procedures that OPM will follow in missing annuitant cases.

(3) Subpart C establishes the methodologies that OPM will apply in determining continuations of coverage and amounts of payments in missing annuitant cases.

(b) Part 831 of this chapter contains information about benefits under CSRS.

(c) Part 838 of this chapter contains information about benefits available to former spouses under court orders.

(d) Parts 841 through 844 of this chapter contain information about benefits under FERS.

(e) Parts 870 through 873 of this chapter contain information about benefits under FEGLI.

(f) Part 890 of this chapter contains information about benefits under FEHBP.

(g) Part 1200 of this title contains information about Merit Systems Protection Board review of OPM decisions affecting interests in CSRS or FERS benefits.

(h) Part 1600 of this title contains information about benefits under the Thrift Savings Plan.

#### **§ 880.103 Definitions.**

For purposes of this part—

*Annuitant* means an individual who has separated from the Federal service with, and has retained, title to a CSRS or FERS annuity, has satisfied the age and service requirements for commencement of that annuity, and has filed an application for that annuity.

*Associate Director* means OPM's Associate Director for Retirement and Insurance or his or her designee;

*Authorized institution* means a government organization or official legally charged with making determinations of death in the State or country of the missing annuitant's domicile, citizenship, or disappearance;

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

*FEGLI* means the Federal Employees Group Life Insurance program established in chapter 87 of title 5, United States Code;

*FEHBP* means the Federal Employees Health Benefits Program established in chapter 89 of title 5, United States Code;

*FERS* means the basic benefit portion of the Federal Employees Retirement System established in subchapters I, II, IV, V, and VI of chapter 84 of title 5, United States Code; *FERS* does not include benefits under the Thrift Savings Plan established under subchapters III and VII of chapter 84 of title 5, United States Code;

*Missing annuitant* means: an individual who has acquired the status of missing annuitant under § 880.203(b).

### Subpart B—Procedures

#### § 880.201 Purpose and scope.

This subpart establishes the procedures that OPM will use to—

- (a) Determine that an individual is a missing annuitant;
- (b) Suspend payment of annuity to a missing annuitant;
- (c) Notify individuals affected by such a suspension of payments; and
- (d) Determine that a missing annuitant has died.

#### § 880.202 Referral to Associate Director.

Any OPM office that receives information concerning the possibility that an annuitant might have disappeared will notify the Associate Director.

#### § 880.203 Missing annuitant status and suspension of annuity.

(a) Upon receipt of information concerning the possibility that an annuitant has disappeared, the Associate Director will conduct such inquiry as he or she determines to be necessary to determine whether the annuitant is alive and whether the annuitant's whereabouts can be determined.

(b) If during an inquiry under paragraph (a) of this section, or upon subsequent receipt of additional information, the Associate Director finds substantial evidence (as defined in § 1201.56(c)(1) of this title) to believe that an annuitant is either not alive or that the annuitant's whereabouts cannot be determined, the annuitant acquires the status of missing annuitant. The Associate Director will then—

- (1) Suspend payments to the missing annuitant; and
- (2) Notify individuals who may be able to qualify for payments under § 880.302 that—
  - (i) OPM has suspended the annuity payments to the missing annuitant;

(ii) Payment may be made under § 880.302, including the amount available for payment, how that amount was determined, and the documentation required (if any) to qualify for such payments; and

(iii) In response to an inquiry from any person seeking CSRS, FERS, FEHBP, or FEGLI benefits, OPM will provide information about documentation necessary to establish a claim for such benefits.

#### § 880.204 Restoration of annuity.

(a) If the missing annuitant's whereabouts are determined, and he or she is alive and—

(1) Competent, OPM will resume payments to the annuitant and pay retroactive annuity for the period in missing status less any payment made to the family during that period; or

(2) Incompetent, OPM will resume payments to a representative payee under section 8345(e) or section 8466(c) of title 5, United States Code, and pay retroactive annuity for the period in missing status less any payment made to the family during that period.

(b) If the missing annuitant's whereabouts cannot be determined, missing annuitant status continues until an authorized institution determines that the missing annuitant is dead. (See § 880.205).

#### § 880.205 Determinations of death.

OPM does not make findings of presumed death. A claimant for CSRS, FERS, or FEGLI death benefits (other than payments under § 880.302) or an individual seeking an adjustment of accounts under § 880.207 must submit a death certificate or other legal certification of death issued by an authorized institution.

#### § 880.206 Date of death.

(a) Except as provided in paragraph (b) of this section, for the purpose of benefits administered by OPM, the date of death of a missing annuitant who has been determined to be dead by an authorized institution is the date of disappearance as determined by the Associate Director.

(b) For the purpose of determining whether a claim is untimely under any statute of limitations applicable to CSRS, FERS or FEGLI benefits (section 8345(i)(2), section 8466(b), or section 8705(b) through (d) of title 5, United States Code), the time between the date of disappearance and the date on which the authorized institution issues its decision that the missing annuitant is dead is excluded.

#### § 880.207 Adjustment of accounts after finding of death.

After a missing annuitant is determined to be dead under § 880.205, OPM will review the case to determine whether additional benefits are payable or excess insurance premiums have been withheld.

### Subpart C—Continuation of Benefits

#### § 880.301 Purpose.

This subpart establishes OPM's policy concerning the availability and amount of CSRS and FERS annuity payments and the continuation of FEHBP and FEGLI coverage and premiums while an annuitant is classified as a missing annuitant.

#### § 880.302 Payments of CSRS or FERS benefits.

(a) OPM will pay an amount equal to the survivor annuity that would be payable as CSRS or FERS survivor annuity to an account in a financial institution designated (under electronic funds transfer regulations in part 209 or part 210 of Title 31, Code of Federal Regulations) by an individual who, if the missing annuitant were dead, would be entitled to receive payment of a survivor annuity.

(b) If more than one individual would qualify for survivor annuity payments in the event of the missing annuitant's death, OPM will make separate payments in the same manner as if the missing annuitant were dead.

#### § 880.303 FEHBP coverage.

(a) If the missing annuitant had a family enrollment, the enrollment will be transferred to the eligible family members under § 890.303(c) of this chapter. If there is only one eligible family member, the enrollment will be changed to a self-only enrollment under § 890.301(p) of this chapter. The changes will be effective the first day of the pay period following the date of disappearance.

(b) If the missing annuitant was covered by a self only enrollment or if there is no eligible family member remaining, the enrollment terminates at midnight of the last day of the pay period in which he or she disappeared, subject to the temporary extension of coverage for conversion.

(c) If the missing annuitant is found to be alive, the coverage held before the disappearance is reinstated effective with the pay period during which the annuitant is found, unless the annuitant, or the annuitant's representative, requests that the enrollment be restored retroactively to the pay period in which the disappearance occurred.

**§ 880.304 FEGLI coverage.**

(a) FEGLI premiums will not be collected during periods when an annuitant is a missing annuitant.

(b)(1) If the annuity of a missing annuitant is restored under § 880.204(a), OPM will deduct the amount of FEGLI premiums attributable to the period when the annuitant was a missing annuitant from any adjustment payment due the annuitant under § 880.204(a).

(2) If a missing annuitant is determined to be dead under § 880.205, FEGLI premiums and benefits will be computed using the date of death established under § 880.206(a).

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BILLING CODE 6325-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-22-AD]

RIN 2120-AA64

**Airworthiness Directives; Mitsubishi Heavy Industries MU-2B Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Mitsubishi Heavy Industry (Mitsubishi) MU-2B series airplanes. The proposed AD would require amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This amendment would include a statement of consequences if the limitation is not followed. The proposed AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by the proposed AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

**DATES:** Comments must be received on or before September 2, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region,

Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-22-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information related to the proposed AD may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946-4162; facsimile (316) 946-4407.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-22-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-22-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA has received reports of 14 occurrences in recent years of incidents

or accidents on airplanes equipped with turboprop engines related to intentional or inadvertent operation of the propellers in the beta range during flight. Beta is the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.

Of the 14 documented in-flight beta occurrences, five were classified as accidents. In-flight beta operation results that preceded the accidents can be classified in one of two categories: (1) Permanent engine damage and total loss of thrust on all engines when the propeller that was operating in the beta range drove the engines to overspeed; and (2) loss of airplane control because at least one propeller operated in the beta range during flight.

The most recent accident occurred when both engines of a Saab Model 340B permanently lost power after eight seconds of beta range propeller operation. The propellers consequently drove the engines into overspeed, which resulted in internal engine failure.

Communication between the FAA and the public during a meeting held on June 11-12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the airplane flight manual (AFM) for airplanes not certificated for in-flight operation with the power levers below the flight idle stop. Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.

**The FAA's Determination**

After examining the circumstances and reviewing all available information related to the incidents and accidents referenced above, the FAA has determined that:

- All airplanes equipped with turboprop engines (provided the airplane is not certificated for in-flight operation with the power levers below the flight idle stop) should have information in the Limitations Section of the AFM that prohibits positioning of power levers below the flight idle stop while the airplane is in flight, including a statement of consequence if the limitation is not followed; and

- Because Mitsubishi Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60 airplanes are equipped with turboprop engines, are not certificated for in-flight operation with the power levers below the flight idle stop, and do not contain information in the Limitations Section