

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 Parts 831 and 844

RIN 3206-AH68

Revised Application Procedures for Disability Retirement Under CSRS and FERS

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to establish uniformity in the application procedures for disability retirement under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The regulations would allow employees to meet the filing deadline for disability retirement by submitting applications directly to their former employing agency or to OPM within 1 year after separation.

DATES: Comments must be received on or before March 17, 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. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Robert Girouard, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Section 8337(b) of title 5, United States Code establishes the legal requirements for applying for disability retirement under the Civil Service Retirement System (CSRS), while section 8453 of title 5 establishes the application requirements for disability retirement under the Federal Employees Retirement System (FERS). Both laws state that a disability retirement claim may be allowed only if the "application is filed with the Office [of Personnel Management] before the employee or Member is separated from

the service or within 1 year thereafter." Both the CSRS and FERS laws allow extension of the time limit only in cases involving the employee's mental incompetence.

Office of Personnel Management (OPM) regulations implementing these provisions of law are found at sections 831.1204 (for CSRS) and 844.201 (for FERS) of Title 5, Code of Federal Regulations. The CSRS regulation requires an employee who is retiring on disability to file an application with OPM before separating from service, or within 1 year after separating. The FERS regulation requires an employee retiring on disability to file an application with his or her employing agency before separating from service, or to file the application with OPM within 1 year after departing.

The proposed revision of these two sections will allow OPM to accept a CSRS or FERS disability application filed with an employee's agency prior to separation, or with either the former employing agency or OPM within 1 year after separation. This revision is a delegation of authority by the Director of OPM under section 1104(a)(2) of title 5, United States Code, allowing an agency's receipt of a disability regulation to satisfy the filing requirement in the law.

Under the current rule, an application filed with the employing agency is not acceptable unless the agency forwards it to OPM in time to meet the 1-year filing deadline. Our proposed change will protect applicants who submit their applications to their employing agency within a year after separation. OPM instructions will require agencies to forward disability applications promptly to OPM for consideration.

In addition, we propose revising sections 831.1204 and 844.201 of Title 5, Code of Federal Regulations to bring the CSRS and FERS disability application filing requirements into conformity with each other, as regards OPM-prescribed disability retirement forms and informal filings. The proposed regulations includes a standard for determining the date of filing, which parallels the standard in regulations of the United States Merit Systems Protection Board at 5 CFR § 1201.4(1).

Finally, we propose revising Section 844.201(c) of Title 5, United States Code to clarify that in FERS, as in CSRS, an

agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions, but is not required to delay taking any appropriate personnel action.

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 Parts 831 and 844

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

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 831 and 844 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 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 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104-8, 109 Stat. 102, as amended by section 153 of Pub. L. 104-134, 110 Stat. 1321; § 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, 107 Stat. 410; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986 Pub. L. 99-251, 100 Stat. 23; § 831.1204 also issued under 5 U.S.C. 1104; 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.

Subpart L—Disability Retirement

2. Section 831.1204 is revised to read as follows:

§ 831.1204 Filing disability retirement applications: General.

(a) Except as provided in paragraphs (c) and (d) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(b) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which the receiving office is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(d) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(e) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

PART 844—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—DISABILITY RETIREMENT

3. The authority citation for part 844 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

Subpart A—General Provisions

4. In section 844.201, paragraphs (a) and (c) are revised to read as follows:

§ 844.201 General requirements.

(a)(1) Except as provided in paragraphs (a)(3) and (a)(4) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the employing agency or OPM within 1 year thereafter.

(2) An application for disability retirement that is filed with OPM or an employing agency by personal delivery is considered filed on the date on which OPM or the employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM or the employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date application is given to the overnight delivery service.

(3) An application for disability retirement that is filed with OPM or the applicant's former employing agency within 1 year after the employee's separation, and that is incompletely executed or submitted in a letter or other form not prescribed by OPM, is deemed timely filed. OPM will not adjudicate the application or make payment until the application is filed on a form prescribed by OPM.

(4) OPM may waive the 1-year time limit if the employee or Member is mentally incompetent on the date of separation or within 1 year thereafter, in which case the individual or his or her representative must file the application with the former employing agency or OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(c) An agency may consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions. An employee's filing for disability retirement does not require the agency to delay any appropriate personnel action.

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

[Docket No. 96-NM-269-AD]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. That AD was prompted by one report indicating that a diode failed, which resulted in battery drain and loss of the emergency DC bus power supply; and another report indicating that the circuit breaker of the transformer rectifier unit No. 3 tripped, which resulted in the loss of the emergency DC/AC bus power supply. This action would require a new terminating modification for the existing AFM revisions. This action would also require a new AFM revision to inform the flightcrew that, under certain conditions, an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur, and to take appropriate corrective actions. The actions specified by the proposed AD are intended to prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane.

DATES: Comments must be received by February 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-269-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN