

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 831

RIN 3206-AH66

Administration and General Provisions—Administration

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations concerning the adjudication of claims arising under the Civil Service Retirement System (CSRS). This amendment would provide that OPM may initially issue decisions that provide the opportunity to appeal directly to the Merit Systems Protection Board (MSPB) without having to request OPM to review its initial decision. The amendment will streamline processing of claims under the CSRS and bring OPM's CSRS regulations into conformity with its Federal Employees Retirement System (FERS) regulations.

DATES: Comments must be received on or before February 18, 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: Kenneth R. Brown, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Currently, section 839.109 of Title 5, Code of Federal Regulations establishes a procedure under which individuals whose rights or interests under CSRS are affected by an initial decision of OPM generally must request that OPM reconsider its decision if they think OPM's initial decision is wrong, before they may seek review outside OPM. After receiving a reconsideration request, OPM renders a final decision that contains notice of the right of the

individual to file an appeal with MSPB. Only if a decision is rendered at the highest level of review available in OPM may the individual seek MSPB review without first obtaining an OPM reconsideration decision.

The reconsideration process sometimes imposes a needless administrative burden on both the individual and OPM, particularly when the facts of the case are not in dispute. When all relevant evidence and facts have already been considered by OPM in its initial decision, reconsideration is redundant, increases OPM's administrative and processing costs and needlessly delays the claimant's opportunity to appeal OPM's decision to MSPB.

To streamline our processing of disputed cases under CSRS, these proposed regulations would bring CSRS regulations into conformity with FERS regulations at 5 CFR 841.307. Under the FERS process, whenever OPM determines that issuance of both an initial and reconsideration decision would be redundant, OPM issues a final decision without the reconsideration process. The final decision fully sets forth OPM's findings and conclusions and contains notice of the right to file an appeal with MSPB. MSPB regulations require *de novo* review of the OPM decision and provide claimants with a right to a hearing before an administrative judge. Our processing under the proposed regulations may be illustrated with the following example. If official records show that a person claiming an annuity has less than the 5 years of service required by law, and the person does not dispute the accuracy of the records, OPM will disallow the claim without a reconsideration right at OPM, but rather with a notice of MSPB appeal rights. On the other hand, if the person believes that the official record of his or her service is incomplete and wishes to submit secondary evidence to prove that he or she actually performed the necessary 5 years of service, OPM would issue an initial decision with a statement of reconsideration rights at OPM before issuing a final decision.

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 Part 831

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

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, 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. 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 A—Administration and General Provisions

2. In § 831.109, paragraph (c) the last sentence is removed, the text in paragraph (f) after the heading "*Final decision*," is redesignated as paragraph (f)(1) and paragraph (f)(2) is added to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(f) * * *

(2) OPM may issue a final decision providing the opportunity to appeal

under § 831.110 rather than an opportunity to request reconsideration under paragraph (c) of this section. Such a decision must be in writing and state the right to appeal under § 831.110.

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[FR Doc. 96-32135 Filed 12-18-96; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145 and 147

Commission Records and Information; Open Commission Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") seeks comments on its proposal to amend rules relating to Commission records and information last revised October 5, 1989. The proposed modifications update and streamline procedures in light of the Commission's experience in the past several years and amend rules regarding open Commission meetings to conform to these modifications.

DATES: Comments are due no later than February 18, 1997.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5120.

SUPPLEMENTARY INFORMATION:

I. Background—Need for Revisions

Based on its experience in the nearly seven years since the rules implementing the Freedom of Information Act ("FOIA") (5 U.S.C. 552 (1994)) were last revised, the Commission has identified several rules which it believes should be modified. The Commission invites comments regarding the proposed revisions.

A. Disclosure of Nonpublic Records

1. Exemption 7

The Freedom of Information Reform Act of 1986 (§§ 1801-1804 of Public L. 99-570) ("Reform Act") amended the

FOIA by modifying the terms of Exemption 7 (5 U.S.C. 552(b)(7)) relating to requests for records compiled for law enforcement purposes, and by supplying new provisions relating to the charging and waiving of fees. On May 22, 1987, the Commission published a final rule at 52 FR 19306 implementing a Uniform Freedom of Information Act Fee Schedule and Guidelines, published by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Guidelines"). At that time, the Commission did not modify its rule regarding Exemption 7 set forth in 17 CFR 145.5(g). Nevertheless, since early 1988, the Commission has been implementing Exemption 7 by following the guidance set forth in the "Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act" (December 1987). The Commission proposes to revise Rule 145.5(g) to conform to its practice and the Reform Act.

Prior to the Reform Act, FOIA permitted the withholding of investigatory records, only to the extent that production "would" interfere with enforcement proceedings; "would" constitute an unwarranted invasion of personal privacy; "would" disclose the identity of a confidential source; or "would" endanger the life or safety of law enforcement personnel. 5 U.S.C. 552(b)(7) (A), (C), and (D) (1982). The Commission's current rule reflects this statutory language.

The Reform Act relaxed the test relating to the withholding of investigatory records by substituting "would" with the phrase "could reasonably be expected to" in 5 U.S.C. 552(b)(7)(A) (interfere with enforcement proceedings), (b)(7)(C) (constitute an unwarranted invasion of personal privacy), and (b)(7)(D) (disclose identity of a confidential source). The Reform Act also modified subsection (b)(7)(F) to provide for the withholding of records to protect the life or physical safety of any person, not just law enforcement personnel. The Commission proposes to amend Rule 145.5(g) to conform to its practice and the Reform Act.

Additionally, the Reform Act amended the confidential source provision of FOIA to extend it to include "a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis." The Reform Act also amended FOIA to provide for expanded protection of the information itself when provided by a confidential source in a criminal or national security investigation. Both of these changes are reflected in the proposed revision of Rule 145.5(g).

Originally, FOIA had provided for the withholding of "investigative techniques and procedures." 5 U.S.C. 552(b)(7)(E) (1982). The Reform Act added an exemption for disclosure of "techniques and procedures for law enforcement investigations or prosecutions, or * * * [disclosure of] guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. 552(b)(7)(E), *as amended*. This statutory change is also reflected in the proposed revision of Rule 145.5(g).

Further, the Commission proposes to expand the description of enforcement proceedings. Whereas the current rule describes "enforcement proceedings" and "investigatory records" primarily as activities of the Commission, the proposed rule expressly includes the law enforcement activities of the Department of Justice, or any United States Attorney, or any Federal, State, local, foreign governmental authority or foreign futures or securities authority, or any futures or securities industry self-regulatory organization. Similarly, the proposed rule also expressly describes "investigatory record" to include material involving the possible violation of any statutory or regulatory provision administered by these same authorities.

Finally, the current rule appears to limit the exemption for investigatory sources to persons who communicated with the Commission "confidentially." As currently phrased, this suggests that a person must express a desire for "confidentiality." Because FOIA does not require a request for confidentiality, the Commission proposes to delete this phraseology. Thus, the proposal covers written communications from, or to, any person complaining or otherwise furnishing information respecting possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

2. Other Changes

The introductory paragraph of Rule 145.5(d)(1), which describes certain business information which the Commission would ordinarily treat as exempt from disclosure, has led to some confusion. Some submitters have read the phrase in (d)(1) concerning "information * * * of a kind not normally disclosed by the person from whom it was obtained" as meaning that if a submitter would not normally disclose the information to the public, the submitter can choose to have the Commission withhold it. Such an interpretation is not consistent with FOIA. The balance of the language of