

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend its regulations on Correction of Administrative Errors to change the period of time for submission of claims for the correction of errors in a participant's Thrift Savings Plan (TSP) account. As presently written, certain sections of the regulations impose conflicting duties upon participants to file claims for correction of errors in their TSP accounts within one year of receipt of notice of an error, and also upon employing agencies or the Board to correct an error without regard to when the error is discovered. The amended regulation resolves this conflict by specifying when errors must be corrected by the employing agency, the Board, or the TSP record keeper, as the case may be, and when they may be corrected in the sound discretion of these parties.

In addition, the amended regulation provides that lost earnings in back pay cases involving separations from service will be calculated based upon the G Fund rates of return, as the regulation presently provides, or as otherwise ordered by the court or other tribunal with jurisdiction over the back pay case.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Merritt A. Willing on (202) 942-1666 or Patrick J. Forrest on (202) 942-1659, FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479. The TSP is a tax-deferred retirement savings plan for Federal employees, similar to a cash or deferred arrangement established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On December 27, 1996, and May 1, 1998, the Board published final rules in the **Federal Register** concerning the correction of administrative errors (61 FR 67472 and 63 FR 24380). These rules were codified at 5 CFR part 1605. The final rules explain how employing agencies, the TSP record keeper, and the Board identify and correct administrative errors in TSP contributions or account balances. The proposed rule amends these rules.

The Board proposes to change the method of calculation of lost earnings for makeup contributions from certain back pay awards involving separations from service. Currently, § 1605.4(a)(3) describes a process for determining lost earnings based upon the rates of return for the G Fund. The rule does not take into account the circumstances of individual cases that are brought before and considered by the court or other tribunal with jurisdiction over the back pay case. Thus, the amendment provides that the TSP will use the G Fund rate, unless otherwise ordered by the court or other tribunal with jurisdiction over the case.

Section 1605.6 describes procedures for participants filing claims against employing agencies. Section 1605.8 describes a similar process for claims against the Board or TSP record keeper. Currently, paragraph (b) of § 1605.6 provides that, if an agency has not voluntarily corrected an administrative error, a participant must file a claim for correction within one year of receipt of the earliest of several forms of notice of the error. At the same time, the regulation requires agencies to "promptly correct" errors "upon discovery." Thus, a conflict exists between a participant's obligation to file a timely claim for correction and an agency's obligation to correct administrative errors "upon discovery,"

which may occur after the participant's right to file a claim has expired. A similar conflict exists in § 1605.8(c) with respect to claims for correction of Board or TSP record keeper errors. Although it has been the Board's experience that errors are almost always corrected upon discovery, the Board recognizes that this conflict should be eliminated to the extent possible.

The amended regulation imposes different obligations on employing agencies, the Board, and the TSP record keeper to correct errors depending upon the length of time that has passed between the error and its discovery. Certain types of errors must be corrected if they are discovered within six months. For agencies, these errors concern the amount and timely remittance of contributions. For the Board and TSP record keeper, these errors concern elections to withdraw a TSP account and the distribution of death benefits. If such errors are discovered more than six months after their occurrence, the agency, Board, or TSP record keeper may exercise its sound discretion in deciding whether to correct them. (It is assumed that none of the foregoing errors are first discovered by a participant.)

For such errors that are discovered by participants, the amendment permits them to file claims against their employing agencies, the Board, or the TSP record keeper without limitation as to time. If the claim is filed within six months of the error, the error must be corrected; otherwise, the agency, Board, or record keeper may use its sound discretion in deciding whether to do so. (Although a participant is not limited as to time in filing a claim for this type of error, the agency, Board, or record keeper, in deciding the claim, may consider the length of time that has passed since the participant first knew, or should have known, of the error.)

For any other type of error (except a retirement system misclassification error, discussed below), the agency, Board, or TSP record keeper, as the case may be, must correct the error if it is discovered within 30 days of the issuance of the most recent TSP participant statement or transaction confirmation that reflects the error; if it is discovered after that time, they may use their sound discretion in deciding whether to do so. (Participant statements will be issued in May and

September during 2000; thereafter, participant statements will be issued in January, April, July, and October of every year.)

For such errors discovered by participants, claims must be filed with the participant's employing agency, the Board, or the TSP record keeper within 30 days of the participant's receiving notice of the error in the TSP participant statement or transaction confirmation. For timely filed claims, the errors must be corrected. For untimely filed claims, however, the agency, Board or TSP record keeper may use its sound discretion in deciding whether to do so. While participants are therefore required to be diligent in discovering errors in their accounts, the Board considers this to be reasonable, particularly in the daily transaction environment forthcoming on October 1, 2000.

There is one type of error for which participants will not be able to receive correction after October 1, 2000, if they have not filed a timely claim. As amended, §§ 1605.6 and 1605.8 provide that no contribution allocation errors occurring before October 1, 2000, may be corrected if the participant does not bring the error to the attention of his or her agency (or the Board or the TSP record keeper, as the case may be) within the relevant 30-day period. The Board will implement a new record keeping system on October 1, 2000, and, inasmuch as pre-conversion contribution allocation errors will be extremely difficult to correct, the Board must insist on compliance with the 30-day limit.

Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

Finally, current § 1605.8(b) is amended by deleting that portion which describes internal processes between the Board and TSP record keeper and by clarifying the effect of a participant's failure to request Board review of a decision of the TSP record keeper in a timely manner.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1605

Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR Part 1605 is proposed to be amended as set forth below:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

§ 1605.4 [Amended]

2. Section 1605.4 is amended by adding after the word "account" at the end of paragraph (a)(3) the words "unless otherwise ordered by the court or other tribunal with jurisdiction over the participant's back pay case".

3. Section 1605.6 is revised to read as follows:

§ 1605.6 Procedures for claims against employing agencies; time limitations.

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of contributions to the TSP (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For any other type of error (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative if it is discovered before 30 days after the issuance of the most recent TSP participant statement that reflected (or

would reflect) the error. If it is discovered after that time, the employing agency may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of contributions to the TSP, the participant may file a claim for correction thereof with his or her employing agency without limitation of time. The agency must promptly correct any such error for which the participant filed a claim within six months of its occurrence; the correction of any such error for which the participant filed a claim after that time is in the agency's sound discretion.

(2) For any other type of error of which a participant has knowledge (other than a retirement system misclassification error, described in paragraph (c) of this section), the participant may file a claim for correction thereof with his or her employing agency no later than 30 days after the participant receives a TSP participant statement reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the agency may, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable

statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary to appeal the denial.

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim.

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures.

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

4. Section 1605.8 is revised to read as follows:

§ 1605.8 Claims for correction of Board or TSP record keeper errors; time limitations.

(a) *Filing claims.* Claims for correction of Board or TSP record keeper errors under this subpart may be submitted initially either to the TSP record keeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary.

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(2) For any other type of error, the Board or TSP record keeper must promptly correct the error if it is discovered before 30 days after the

issuance of the earlier of the most recent TSP participant statement or transaction confirmation that reflected (or would reflect) the error. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to correct it, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the participant or beneficiary may file a claim for correction thereof with the Board or TSP record keeper without limitation of time. The Board or TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is in the sound discretion of the Board or TSP record keeper.

(2) For any other type of error of which a participant or beneficiary has knowledge, he or she may file a claim for correction thereof with the Board or TSP record keeper no later than 30 days after receipt of the earlier of a TSP participant statement or transaction confirmation reflecting the error. The Board or TSP record keeper must promptly correct such errors.

(3) If a participant or beneficiary fails to file a claim for correction of an error described in paragraph (c)(2) of this section in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(d) *Processing claims.* (1) If the initial claim is submitted to the TSP record keeper, the TSP record keeper may either respond directly to the claimant, or may forward the claim to the Board for response. If the TSP record keeper responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the record keeper's response.

(2) If the Board denies all or any part of a claim (whether upon review of a TSP record keeper denial or upon an initial review by the Board), the

claimant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the claimant does not submit a request to the Board for review of a claim denial by the TSP record keeper within the 90 days permitted under paragraph (d)(1) of this section, the claimant shall be deemed to have accepted the TSP record keeper's decision.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL190-1b; FRL-6574-2]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Approval of a Site-Specific Sulfur Dioxide Plan; Revision for CILCO Edwards Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a May 21, 1999, site-specific sulfur dioxide (SO₂) SIP revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. Illinois' requested SIP revision provides for a temporary relaxation in the fuel quality limit for one of the facility's three boilers, but adds an overall daily sulfur dioxide emission cap for the three boilers. The SIP revision request included dispersion modeling results which indicated that the revision will not cause violations of the SO₂ standards. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity