

# 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 Parts 1600, 1605, 1631, 1651, 1655 and 1690

### Employee Contribution Election and Contribution Allocations; Correction of Administrative Errors; Availability of Records; Death Benefits; Loan Program; Thrift Savings Plan

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Proposed rules with request for comments.

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations to reflect the requirements stated in the Treasury Regulations interpreting I.R.C. 401(a)(31) to provide additional means to verify that an amount is eligible for rollover to the TSP.

The Agency proposes to amend its regulations to clarify that the procedures applicable to an employee who was misclassified as either CSRS or FERS also apply to an employee who elects retroactive non-appropriated fund (NAF) retirement coverage.

The Agency proposes to add a rule regarding the production and authentication of records. The Agency would authenticate records in a manner consistent with Federal law and regulations.

The Agency proposes to amend its death benefit payment regulations in order to allow a non-spouse beneficiary to transfer a death benefit payment to an inherited IRA as authorized by the Pension Protection Act.

The Agency proposes to amend its loan regulations to reflect the changes brought by the Bankruptcy Abuse and Consumer Protection Act of 2005. Specifically, the amendments would reflect that a bankruptcy court now lacks jurisdiction over a TSP loan.

The Agency proposes to amend its regulations to clarify its power of attorney regulations by eliminating examples of general and special powers

of attorney, some of which would no longer be acceptable to the Agency, and directing participants to a sample form at <http://www.tsp.gov>.

**DATES:** Comments must be received on or before September 10, 2007.

**ADDRESSES:** Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942-1676.

**FOR FURTHER INFORMATION CONTACT:** Megan Graziano on (202) 942-1644.

**SUPPLEMENTARY INFORMATION:** The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

### Employee Contribution Election and Contribution Allocations

The Agency proposes to amend its regulations regarding eligible rollover distributions to the TSP. In particular, since Treasury regulations only require that the Agency receive sufficient evidence to reasonably conclude that a contribution is a valid rollover contribution, the Agency no longer requires a plan administrator or trustee to certify such distributions.

Further, when a participant completes a rollover, IRS rules require that the rollover be completed within 60 days of the date the participant received the distribution. Therefore, Agency practice is to have the participant certify the date the distribution was received. Agency regulations, however, require the financial institution to certify the date of the distribution. This date is irrelevant to a rollover that is completed by a participant.

In addition, the Agency can conduct additional verification in the event that the date certified varies significantly from the date on the check. Therefore, the Agency proposes to amend its regulations to delete the requirement

that a financial institution certify the date of distribution.

### Correction of Administrative Errors

The Agency proposes to amend its regulations to clarify that the procedures applicable to a participant misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, also apply to an employee who elects retroactive NAF coverage. These procedures will ensure that the employee either is refunded all contributions made by the employee or maintains ownership of all contributions that the TSP's record keeping system is unable to refund to the employee and that will continue to inure to the employee's benefit. The agency contributions that forfeit to the TSP will benefit all TSP participants because they will be used to offset the TSP's administrative expenses.

### Availability of Records

The Agency proposes to add a section to its regulations regarding production and disclosure of records, and specifically, in relation to certification and authentication of records. The Agency frequently receives subpoenas directing it to authenticate Agency documents for use in state court proceedings. Often, these subpoenas request that such documents be authenticated in accordance with state court procedures and receive notarization. The Agency lacks the expertise to comply with the procedures of the individual 50 states and attempting to do so would result in a misallocation of TSP resources. Furthermore, it is not necessary for the Agency to comply with state court procedures in order for Agency documents to be admissible in a state court proceeding.

Section 1733(b) of title 28, United States Code, provides that "[p]roperly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof." In order to properly authenticate Agency documents, the records custodian or other qualified individual shall attach a written declaration that complies with current Federal Rules of Evidence. Documents so authenticated shall be admitted in evidence equally with the originals thereof. See 28 U.S.C. 1733(b).

Therefore, this regulation prescribes procedures for the Agency to authenticate documents so that the documents will be admissible in all state court proceedings. These procedures shall be the exclusive means of authenticating Agency documents.

#### Death Benefits

The Agency proposes to amend its regulations to reflect changes in its death benefit payment process brought by the Pension Protection Act (PPA) of 2006. The PPA allows non-spouse beneficiaries to transfer all or part of their benefits payable from a qualified retirement plan or government plan to an inherited IRA. As a result, the Agency proposes to amend its regulations to allow a non-spouse beneficiary to transfer all or part of his or her death benefit payment from the TSP to an inherited IRA.

#### Loan Program

The Agency proposes to amend its regulations to reflect changes in bankruptcy law. Due to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109–8), a bankruptcy court lacks jurisdiction over a TSP loan under both chapter 7 and chapter 13 procedures. To reflect this change, language mentioning the possibility of a bankruptcy court stopping TSP loan payments under a chapter 13 bankruptcy procedure would be removed.

#### Thrift Savings Plan

The Agency proposes to amend its regulations to simplify the regulations' description of acceptable general and special powers of attorney. By eliminating the noncomprehensive list of examples provided in the regulations, the agency hopes participants will use the regulations' thorough definitions as well as overview material and sample forms provided at <http://www.tsp.gov> to secure a proper power of attorney.

#### 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.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 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 § 1532 is not required.

#### Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

#### List of Subjects

5 *CFR* Parts 1600, 1690

Government employees, Pensions, Retirement.

5 *CFR* Parts 1605, 1651

Claims, Government employees, Pensions, Retirement.

5 *CFR* Part 1631

Courts, Freedom of information, Government employees.

5 *CFR* Part 1655

Credit, Government employees, Pensions, Retirement.

**Thomas K. Emswiler,**

*General Counsel, Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, the Agency proposes to amend 5 *CFR* chapter VI as follows:

#### PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION

1. The authority citation for part 1600 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8432(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Amend § 1600.32 by removing the second sentence of paragraph (a) and adding two sentences in its place, and revising paragraph (b)(2) to read as follows:

#### § 1600.32 Methods for transferring eligible rollover distribution to TSP.

\* \* \* \* \*

(a) \* \* \* The administrator or trustee must either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a

contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

(b) \* \* \*

(2) The administrator or trustee must either complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper or the Agency must receive sufficient evidence from which to reasonably conclude that a contribution is a valid rollover contribution. By way of example, sufficient evidence to conclude a contribution is a valid rollover contribution includes a copy of the plan's determination letter, a letter or other statement from the plan indicating that it is an eligible retirement plan, a check indicating that the contribution is a direct rollover or a tax notice from the plan to the participant indicating that the participant could receive a rollover from the plan.

\* \* \* \* \*

#### PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

3. The authority citation for part 1605 is revised to read as follows:

**Authority:** 5 U.S.C. 8351, 8432a, and 8474(b)(5)(5) and (c)(1). Subpart B also issued under section 1043(b) of Pub. Law 104–106, 110 Stat. 186 and sec. 7202(m)(2) of Pub. Law 101–508, 104 Stat. 1388.

4. Section 1605.14 is amended by revising the third sentence of paragraph (a)(1), revising paragraph (c)(2) and adding paragraph (e) to read as follows:

#### § 1605.14 Misclassified retirement system coverage.

(a) \* \* \*

(1) \* \* \* If the participant requests a refund of employee contributions, the employing agency must submit a negative adjustment record to remove these funds under the procedure described in § 1605.12.

(c) \* \* \*

(2) Employer contributions in the account are subject to the rules in paragraph (a)(2) of this section.

\* \* \* \* \*

(e) The provisions of paragraph (c) of this section shall apply to any TSP contributions relating to a period for which an employee elects retroactive

Nonappropriated Fund retirement coverage.

**PART 1631—AVAILABILITY OF RECORDS**

5. The authority citation for part 1631 continues to read as follows:

**Authority:** 5 U.S.C. 552.

6. Add § 1631.34 to read as follows:

**§ 1631.34 Certification and authentication of records.**

(a) Upon request, the records custodian or other qualified individual shall authenticate copies of books, records, papers, writings, and documents by attaching a written declaration that complies with current Federal Rules of Evidence. No seal or notarization shall be required. Copies of any books, records, papers, or other documents in the Federal Retirement Thrift Investment Board shall be admitted in evidence equally with the originals thereof when authenticated in this manner.

(b) Fees for copying and certification are set forth in 5 CFR 1630.16.

**PART 1651—DEATH BENEFITS**

7. The authority citation for part 1651 continues to read as follows:

**Authority:** 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

8. In § 1651.14, redesignate paragraphs (g) and (h) as paragraphs (h) and (i), and add new paragraph (g) to read as follows:

**§ 1651.14 How payment is made.**

\* \* \* \* \*

(g) *Payment to inherited IRA on behalf of a non-spouse beneficiary.* If payment is to an inherited IRA on behalf of a non-spouse beneficiary, the check will be made payable to the account. Information pertaining to the inherited IRA must be submitted by the IRA trustee.

\* \* \* \* \*

**PART 1655—LOAN PROGRAM**

9. The authority citation for part 1655 continues to read as follows:

**Authority:** 5 U.S.C. 8433(g), 8439(a)(3) and 8474.

**§ 1655.14 [Amended]**

10. In § 1655.14, the third sentence of paragraph (a) is removed.

**§ 1655.15 [Amended]**

11. In § 1655.15 “or” is added to the end of paragraph (a)(5), a period replaces the semicolon at the end of paragraph (a)(6), “or” is removed from

the end of paragraph (a)(6), and paragraph (a)(7) is removed.

**PART 1690—THRIFT SAVINGS PLANS**

12. The authority citation for part 1690 continues to read as follows:

**Authority:** 5 U.S.C. 8474.

13. Amend § 1690.12 by revising the second sentence in paragraph (b) and the third sentence in paragraph (c) to read as follows:

**§ 1690.12 Power of attorney.**

\* \* \* \* \*

(b) \* \* \* Additional information regarding general powers of attorney can be accessed at <http://www.tsp.gov>.

(c) \* \* \* Additional information regarding special powers of attorney, as well as a sample form, can be accessed at <http://www.tsp.gov>.

[FR Doc. E7-15635 Filed 8-9-07; 8:45 am]

**BILLING CODE 6760-01-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 959**

[Docket Nos. AO-322-A4; AMS-2006-0079; FV06-959-1]

**Onions Grown in South Texas; Secretary’s Decision and Referendum Order on Proposed Amendments to Marketing Agreement No. 143 and Order No. 959**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amending the marketing agreement and order (order) for onions grown in South Texas, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order. The amendments include: Adding authority to the order to establish supplemental assessment rates on specified containers of onions; authorizing interest and late payment charges on assessments not paid within a prescribed time period; and authorizing the committee to engage in marketing promotion and paid advertising activities. Two additional amendments were proposed by the Department of Agriculture (USDA): Requiring that a continuance

referendum be conducted every six years to determine grower support for the order; and, limiting the number of consecutive terms of office a member can serve on the committee. The proposed amendments are intended to improve the operation and functioning of the South Texas onion marketing order program.

**DATES:** The referendum will be conducted from September 10 through September 28, 2007. The representative period for the purpose of the referendum is August 1, 2006 through July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 2202 Monterey Street, #102-B, Fresno, CA 93721; telephone: (559) 487-5110, Fax: (559) 487-5906, E-mail: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov); or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, E-mail: [Kathy.Finn@usda.gov](mailto:Kathy.Finn@usda.gov).

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include a Notice of Hearing issued on May 23, 2006, and published in the May 30, 2006, issue of the **Federal Register** (71 FR 30629), and a Recommended Decision issued on March 29, 2007 and published in the April 6, 2007 issue of the **Federal Register** (72 FR 17037).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

**Preliminary Statement**

The proposed amendments are based on the record of a public hearing held on June 15, 2006, in Mission, Texas. The hearing was held to consider the proposed amendment of Marketing Agreement No. 143 and Order No. 959 regulating the handling of onions grown in South Texas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et