

# Proposed Rules

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 1651

#### Death Benefits

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

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

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the Thrift Savings Plan's (TSP's) death benefit regulations to permit the TSP to rely on a participant's marital status as stated on a Federal income tax form when determining whether a deceased participant had a common law marriage.

**DATES:** Comments must be received on or before February 13, 2006.

**ADDRESSES:** Comments may be sent to Elizabeth S. Woodruff, 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:** John A. Hahn on (202) 942-1630.

**SUPPLEMENTARY INFORMATION:** The Board administers the Thrift Savings Plan, 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)).

The Executive Director proposes to amend TSP regulations to clarify the proof needed to establish a common law marriage. If a participant dies without having withdrawn his or her TSP account and without having designated a beneficiary, FERSA's order of

precedence provides that the account will be paid to the surviving spouse, if any. The TSP looks to the law of the state in which the participant was domiciled at the time of death to determine whether the participant was married. In most states, this means having a valid marriage license. However, some states (and the District of Columbia) still recognize common law marriage. In addition, every state is constitutionally required to recognize as valid a common law marriage that was recognized in another state.

Contrary to popular belief, a common law marriage is not created when two people simply live together for a certain number of years. In order to have a valid common law marriage, a couple generally must do all of the following: Live together for a significant period of time, hold themselves out as a married couple, and intend to be married. When a common law marriage exists, the couple receives the same legal treatment given to formally married couples, including the requirement that they go through a legal divorce to end the marriage.

In order to facilitate the payment of a death benefit to a spouse claiming to be the common law spouse of a TSP participant, the Executive Director intends to amend TSP regulations to permit, but not require, reliance on the participant's marital status as stated on a Federal income tax form. Such a form is submitted to the Internal Revenue Service under penalty of perjury and, therefore, is presumed to be reliable. Alternatively, the putative spouse may obtain a court order or administrative adjudication.

#### 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, 1501-1571, the effects of this regulation on state, local, and tribal

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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 Board 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 in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

#### Gary A. Amelio,

*Executive Director Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, the Board amends 5 CFR chapter VI as follows:

#### PART 1651—DEATH BENEFITS

1. 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).

2. Revise § 1651.5 to read as follows:

##### 1651.5 Spouse of participant.

(a) For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

(b) If a person claims to have a marriage at common law with a deceased participant, the TSP will pay benefits to the putative spouse under § 1651.2(a)(2) in accordance with the marital status shown on the most recent Federal income tax return filed by the participant. Alternatively, the putative spouse may submit a court order or

administrative adjudication determining that the common law marriage is valid.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04-094-1]

#### Tuberculosis in Captive Cervids; Extend Interval for Conducting Reaccreditation Test

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. We are also proposing to reduce, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. These actions would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for State and Federal regulatory agencies. In addition, we are proposing to amend the regulations by removing references to the blood tuberculosis test for captive cervids, as that test is no longer used in the tuberculosis eradication program for captive cervids. This proposed change would update the regulations so that they refer only to those official tests currently in use.

**DATES:** We will consider all comments that we receive on or before March 13, 2006.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS-2005-0119 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can

be viewed using the “Advanced Search” function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04-094-1, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-094-1.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737-1231, (301) 734-5467.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis (tuberculosis) is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and state animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, “Tuberculosis” (referred to below as the regulations), and in the “Uniform

Methods and Rules—Bovine Tuberculosis Eradication” (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart C of the regulations (§§ 77.20 to 77.41) addresses captive cervids.

#### Accredited Herd Status

In § 77.20, *accredited herd* is defined as “A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.33(f) and that meets the standards set forth in § 77.35. The tests [i.e., the three tests necessary to qualify for accredited herd status] must be conducted at 9–15 month intervals.” The regulations in § 77.35(d) set out the conditions that must be met in order for a herd of captive cervids to maintain its accredited herd status. Specifically, to maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the final test necessary for the herd to be recognized as an accredited herd). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year thereafter). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered “unclassified” and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the state or zone in which the herd is located.

In this document, we are proposing to amend the regulations to increase, by 1 year, the term for which accredited herd status is valid and to allow reaccreditation tests to be performed within 33–39 months of the anniversary date. We are also proposing to amend the regulations by reducing, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd.