Rules and Regulations

Federal Register
Vol. 63, No. 19
Thursday, January 29, 1998

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to its final rules on correction of administrative errors affecting Thrift Savings Plan (TSP) accounts. The amendment provides for attribution of makeup contributions from a participant to the appropriate prior year in which the contributions should have been made. Such makeup contributions are permitted only if aggregation with other contributions made in (or with respect to) the appropriate prior year would not result in contributions in excess of the limits imposed by sections 402(g) and 415(c) of the Internal Revenue Code (I.R.C.).

DATES: *Effective date:* January 29, 1998. *Comment date:* March 30, 1998.

ADDRESSES: Send comments to Elizabeth S. Woodruff, Associate General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, (202) 942–1661.

SUPPLEMENTARY INFORMATION: A final rule governing the correction of administrative errors was published in the **Federal Register** on December 24, 1996 (61 FR 68464). That rule revised the final regulations that were published in the **Federal Register** on December 4, 1987 (52 FR 46314). Both sets of regulations required a limitation on TSP makeup contributions when a retroactive adjustment to an employee's pay included a correction for the employee's inability to have made TSP contributions during the period of retroactivity. At the time these regulations were issued, the Board interpreted I.R.C. 402(g) and its discussions with the Internal Revenue Service (IRS) as requiring that such makeup contributions always be counted against the IRS deferral limit of the year in which they were actually made, rather than the limit of the year to which they were attributable.

On June 25, 1997, a decision was issued in the matter of *Kahmann* v. *Reno,* 967 F. Supp. 731 (N.D.N.Y.), holding that application of the current IRS deferral limit to makeup contributions for prior years was contrary to the purpose of a make-whole award. The court required the participant's employing agency to calculate contributions for each pay period for which the employee could have made a TSP contribution and to deposit the appropriate contributions (and lost earnings) to the employee's account without regard to the current deferral limit.

Because this holding involved the Board's interpretation of I.R.C. 402(g), the Board requested guidance from the IRS on whether a participant's makeup contributions to the TSP in the current year could be attributed to the years in which the contributions should have been made for purposes of the limit on annual contributions found in I.R.C. 402(g). The IRS advised the Board that such makeup contributions could indeed be so attributed.

For this reason, § 1605.4(c)(1) of the Board's error correction regulations is being amended to provide that makeup contributions to the TSP will be attributed to the year in which the contributions should have been made to determine compliance with the (applicable) IRS deferral limit. The board intends to apply this rule to all situations in which contributions should have been made in an earlier year, regardless of the reason the employee was improperly not permitted to contribute to the TSP. Because this change could affect the ongoing makeup contributions of some participants, it is being given immediate effect.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect TSP participants.

Paperwork Reduction Act

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

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations facilitate correction of errors in the amount of contributions made to Thrift Savings Plan accounts. Prompt implementation of the regulations will provide necessary guidance to employing agencies and TSP participants.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(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 the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined in section 804(2) of title 5, United States Code.

List of Subjects in 5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director.

Federal Retirement Thrift Investment Board

For the reasons set forth in the preamble, part 1605 of chapter VI of title

5 of the Code of Federal Regulations is amended as follows:

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.

2. Section 1605.2 is amended by revising paragraph (c)(5) to read as follows:

§ 1605.2 Makeup of missed or insufficient contributions.

* * * * *

(c) * * *

(5) When establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

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3. Section 1605.4 is amended by revising paragraph (c)(1) to read as follows:

§ 1605.4 Back pay awards and other retroactive pay adjustments.

* * * * *

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed before the back pay or other retroactive pay adjustment is made. The makeup employee contributions must be deducted from the back pay or other retroactive pay adjustment and contributed to the TSP. However, contributions must not be made that would cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year.

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[FR Doc. 98–2166 Filed 1–28–98; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV98–979–1 IFR]

Melons Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began October 1 and ends September 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective January 30, 1998. Comments received by March 30, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not