

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 and 1650

Employee Elections To Contribute to the Thrift Savings Plan and Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is proposing to amend the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to permit participants, beginning April 1, 2002, to transfer into their TSP accounts tax-deferred balances from an expanded group of eligible retirement plans. The Executive Director is also proposing to amend the regulations on loans and withdrawals from the TSP to specify that a participant who is seeking an exception to the spousal signature and notification requirements on the ground that the spouse's whereabouts are unknown must demonstrate that he or she made a good faith effort to locate the spouse in the 90 days preceding submission of the request to the TSP.

DATES: Comments must be received on or before March 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942-1661; Thomas L. Gray on (202) 942-1662; or Patrick J. Forrest on (202) 942-1659. FAX (202) 942-1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, which has been 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, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

Analysis of the Amendment to Part 1600

On December 2, 1987, the Board published in the **Federal Register** (52 FR 45802) interim rules concerning the procedures governing employee contributions to the TSP. A final rule was published in the **Federal Register** (59 FR 55331) on November 4, 1994. On October 27, 2000, Congress passed Public Law 106-361, which amended FERSA to permit the TSP to accept into the Plan any eligible rollover distribution, as that term is defined in section 402(c)(8) of the Internal Revenue Code (I.R.C.), that a qualified trust could accept. 5 U.S.C. 8432(j). Accordingly, on May 2, 2001 (66 FR 22088), the Board amended the final rule to permit participants to transfer into their TSP accounts funds from certain qualified retirement plans and conduit individual retirement accounts (IRAs). This proposed rule further amends the final rule.

On May 26, 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, which included a number of pension reform provisions. Among those was a provision expanding the definition of eligible retirement plan and thus expanding the types of plans into and from which an eligible rollover distribution can be made. Under EGTRRA, an eligible retirement plan includes: an individual retirement account described at I.R.C. § 408(a); an individual retirement annuity described at I.R.C. § 408(b); a plan qualified under I.R.C. § 401(a), including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an I.R.C. § 403(a) annuity plan; an I.R.C. § 403(b) tax-sheltered annuity; and an eligible I.R.C. § 457(b) plan maintained by a governmental employer. (The first two plans are also known as "traditional IRAs"; the others are known as "eligible employer plans.") The proposed amendment therefore provides that, beginning April 1, 2002, the TSP will accept an eligible

rollover distribution from any eligible retirement plan.

EGTRRA also permitted plans to accept after-tax contributions if their plan documents were amended to allow such contributions. The TSP's plan document, the Federal Employees' Retirement System Act, does not, however, allow the TSP to accept after-tax money; therefore, the requirement is unchanged that an eligible rollover distribution transferred or rolled over into the TSP must consist solely of tax-deferred money. Also, uniformed services participants who are permitted to make tax-exempt contributions to their uniformed services TSP accounts cannot transfer those monies into their civilian TSP accounts.

Analysis of the Amendment to Part 1650

Part 1650 was published in final form in the **Federal Register** on February 21, 1995 (60 FR 9595); the rule was substantially revised and published in final form again on September 18, 1997 (62 FR 49112). The final rule was subsequently amended on June 9, 1999 (64 FR 31052) and on August 20, 2001 (66 FR 43461). This proposed rule further amends the final rule.

FERSA provides that the spouse of a FERS participant or uniformed services member must consent to a loan or in-service withdrawal and waive his or her entitlement to a joint and survivor annuity in the case of a different post-employment withdrawal election (signature requirement). 5 U.S.C. 8435(a)(1)(B), (b) and (e)(1)(A), and 8440e(c). In addition, the spouse of a CSRS participant is entitled to be given notice when the participant applies for a loan or withdrawal (notice requirement). 5 U.S.C. 8351(b)(5)(B). These requirements do not apply, however, if a participant can establish to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. 5 U.S.C. 8351(b)(5)(C), 8435(a)(2), (b) and (e)(1)(C).

Section 1650.63(a)(3) provides that an exception to the spousal signature or notice requirement may be granted if a participant submits statements from himself or herself and from two other persons that explain the participant's inability to locate the spouse and describe the good faith efforts the participant has made to locate the spouse. Currently, the regulation does not prescribe a time period within

which these efforts must have been made; informally, the TSP has accepted efforts to locate the spouse that are as much as 12 months old; however, efforts to locate a spouse that are 12 months old may be stale. The requirement to make an effort to locate a spouse is not an onerous one, particularly when one considers the significance of the spouses' rights that may be affected. Thus, the Executive Director is proposing to amend the regulations to state clearly that the participant's efforts to locate the spouse must have been made within the 90 days preceding submission to the TSP of the request for an exception.

In addition, section 1650.63(b) currently provides that an approved exception is valid for one year. Without a concurrent change to this provision, a participant's efforts to locate the spouse could still be more than 15 months old by the time a withdrawal or loan is approved. Accordingly, the Executive Director is also proposing to amend this section to provide that an approved exception will be valid for only 90 days; conforming amendments are also proposed for §§ 1650.60(b), 1650.61(b) and (c)(1)(ii), 1650.62(b) and (c), and 1650.64(c), replacing references to a one year period with a reference to a 90-day period. This means that a participant applying to the TSP for a loan or withdrawal without his or her spouse's signature, or, if applicable, the spouse's address, must have made a good faith effort to locate the spouse within the last 6 months if there is no judicial, police, or governmental finding that the spouse's whereabouts cannot be determined.

The TSP's loan regulations at 5 CFR 1655.18(e) incorporate the provisions of § 1650.63. Therefore, the requirements for an exception to the spousal rights requirements will also change for participants applying for a loan.

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

5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, 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, chapter VI, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

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

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

2. Section 1600.1 is amended by adding in alphabetical order the following definition:

§ 1600.1 Definitions.

* * * * *

Eligible retirement plan means an individual retirement account described in I.R.C. § 408(a) (26 U.S.C. 408(a)); an individual retirement annuity described in I.R.C. § 408(b) (26 U.S.C. 408(b)) (other than an endowment contract); a qualified trust; an annuity plan described in I.R.C. § 403(a) (26 U.S.C. 403(a)); an eligible deferred compensation plan described in I.R.C. § 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. § 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)); and an annuity contract described in I.R.C. § 403(b) (26 U.S.C. 403(b)).

* * * * *

3. Section 1600.31 is revised to read as follows:

§ 1600.31 Accounts eligible for transfer.

(a) Effective when the proposed rule becomes final, a participant who receives an eligible rollover distribution, within the meaning of I.R.C. § 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible retirement plan may transfer that

distribution into his or her existing TSP account. This option is not available to participants who have already made a full withdrawal of their account after separation from service or who are receiving monthly payments.

(b) The only monies that the TSP will accept are monies that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP will not accept any monies that have already been subjected to Federal income tax (after-tax monies) or monies that will not be subject to Federal income tax (tax-exempt monies).

4. Section 1600.32 is revised to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

(a) Trustee-to-trustee transfer.

Participants may request that the administrator, trustee, or custodian of their eligible retirement plan transfer any or all of their account directly to the TSP by executing and submitting a Form TSP-60 or TSP-U-60, Request for a Transfer into the TSP, to the administrator, trustee, or custodian. The administrator, trustee, or custodian must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper.

(b) Rollover by participant.

Participants who have already received an eligible rollover distribution from an eligible retirement plan may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete Form TSP-60 or TSP-U-60, Request for a Transfer Into the TSP.

(2) The administrator, trustee, or custodian of the eligible retirement plan must certify on the Form TSP-60 or TSP-U-60 the amount and date of the distribution.

(3) The participant must submit the completed Form TSP-60 or TSP-U-60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the "Thrift Savings Plan," for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible retirement plan. The transaction is not complete until the TSP recordkeeper receives the Form

TSP-60 or TSP-U-60, executed by both the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) *Participant's certification.* When transferring an eligible rollover distribution to the TSP by either a trustee-to-trustee transfer or a rollover, the participant must certify that:

(1) The distribution is not one of a series of substantially equal payments made for the life of the participant or for a period of 10 years or more;

(2) The distribution is not a minimum distribution required under I.R.C. § 401(a)(9) (26 U.S.C. 401(a)(9));

(3) The distribution is not a hardship distribution; and

(4) If not transferred or rolled over, the distribution would be includible in gross income for the tax year in which the distribution is paid.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

5. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

§§ 1650.60, 1650.61 and 160.62 [Amended]

6. Sections 1650.60(b), 1650.61(b) and (c)(1)(ii), and 1650.62(b) and (c) are amended by removing the words “one year” and adding in their place the words “90 days”.

7. Sections 1650.63(a)(3) and (b) are revised to read as follows:

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) * * *

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days preceding submission to the TSP of the request for an exception. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, “I have not seen nor heard from him” or, “I have not had contact with her”, are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant has made

attempts within the preceding 90 days to locate the spouse and that the participant does not know the spouse's whereabouts.

(iii) All statements must be signed and dated and must include the following certification:

I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.

(b) A withdrawal election received within 90 days of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 [Amended]

8. Section 1650.64(c) is amended by removing the words “one-year period” and adding in their place the words “90-day period”.

[FR Doc. 02-4499 Filed 2-26-02; 8:45 am]

BILLING CODE 6760-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-35-AD]

RIN 2120-AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV-9-B-C and MTV-3-B-C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to MT-Propeller Entwicklung GMBH models MTV-9-B-C and MTV-3-B-C propellers. That AD currently requires initial and repetitive inspections of Torx head blade root lag screws that are used on certain serial number (SN) propellers and replacing all lag screws on the propeller if any screws are found broken or with insufficient torque. In addition, that AD currently requires replacing certain part number (P/N) Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This proposal would require the expansion of the applicability from certain SN propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws. This proposal is prompted by FAA awareness that a propeller hub of an affected propeller could be changed, thereby changing the propeller serial

number, creating a propeller that is not listed in the AD and that has affected blades and lag screws. The actions specified by the proposed AD are intended to prevent failure of the blade root lag screw, which could result in propeller blade separation and loss of control of the airplane.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-35-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: “9-ane-adcomment@faa.gov”. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D-94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet address: “propeller@aol.com”. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Gaulzetti, Aerospace Engineer, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7156, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of