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 comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed revision to the Board's existing Error Correction Regulations. The proposed revision reorganizes the regulations to make them more concise and easy to read, reflects changes in Board policy and procedures adopted since publication of the regulations in 1987, and eliminates provisions that no longer apply.

DATES: Comments must be received on or before December 5, 1996.

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

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

SUPPLEMENTARY INFORMATION: Interim regulations governing error correction relating to the Thrift Savings Plan (TSP) were published in the Federal Register on May 13, 1987 (52 FR 17919) and July 22, 1987 (52 FR 27527). The final regulations, found at 5 CFR Part 1605, were published in the Federal Register on December 4, 1987 (52 FR 46314). The present proposal revises the final regulations. This proposed revision includes several substantive changes in the procedures by which administrative errors are corrected, as well as non-substantive editorial changes in style and organization.

The proposed revision has been divided into four subparts. Subpart A contains definitions of terms used in this part. The definition section has been expanded to encompass a wider range of terms than was included in the existing regulation. The expanded definition section is consistent with the definitions contained in 5 CFR Part 1606, and should eliminate potential confusion or conflict between the provisions of the two parts. In addition, the proposed revision refers to Part 1606 where such references clarify the relationship between the two parts.

Subpart B applies to employing agency errors. The proposed revision has been reorganized for clarity into separate subparts for employing agency errors and for Board or TSP recordkeeper errors. Board and TSP recordkeeper errors are addressed in Subpart C.

The existing regulations contain two largely duplicative sections: § 1605.2, Failure to participate or delay in participation, and § 1605.3, Insufficient contribution. The proposed revision combines these sections in § 1605.2, makeup of missed or insufficient contributions, without substantive change in the essential rules of the existing regulation. Employing agencies are responsible for promptly making up employer contributions (agency automatic (1%) contributions and agency matching contributions) that they are obligated to make but have not made. If employee contributions have not been made due to an employing agency error, the participant may establish a schedule of makeup contributions to be deducted from current pay in addition to any regular TSP contributions the participant may be making. The employing agency is also responsible for contributing any applicable agency matching contributions on the missed employee contributions, but only when the participant makes up the employee contributions.

Section 1605.4 of the existing regulations, titled ''Excess deduction or contribution,'' addresses removal by employing agencies of contributions from participants' accounts. The proposed revision deals with that subject in § 1605.3, which incorporates more detailed rules for removal of contributions than were included in § 1605.4 of the existing regulations. In particular, § 1605.3 describes information employing agencies must submit on negative adjustment records, the processing of negative adjustment records (including calculation of investment gains and losses on the money that is removed), and the manner in which the money will be removed from the participants' accounts. Different rules apply to investment gains or losses for employee contributions and employer contributions.

Sections 1605.9 and 1605.10 of the existing regulations address TSP contributions related to back pay awards or other retroactive pay adjustments. Those issues are addressed in § 1605.4 of the proposed revision, which contains more detail about the types of elections a participant is entitled to make when he or she is reinstated without a break in service after reversal of a wrongful separation. The proposed revision clarifies that, for purposes of computing lost earnings on makeup contributions that relate to the period of wrongful separation, the participant may not choose investment funds with the benefit of hindsight concerning the performance of the TSP investment funds. Earnings will be calculated at the G Fund rate of return up to the date of any interfund transfer that was made by the participant during the period of separation. From the date of the interfund transfer forward, the lost earnings will be calculated as if the money had been invested in accordance with the percentages elected for the interfund transfer.

This approach is consistent with, and reiterates, the rules established in Part 1606 (which addresses the payment of lost earnings attributable to employing agency errors), particularly § 1606.11(c). As in the existing regulations, the proposed revision sets forth different rules for back pay awards or other retroactive pay adjustments for periods during which the participant remained employed by the Federal Government.

Section 1605.5 governs situations where employing agencies have erroneously classified participants' retirement coverage (e.g., FERS or CSRS). This issue was previously addressed in § 1605.11. The proposed revision provides more detailed rules than the existing regulation. Under the proposed revision, different rules apply for a FERS participant who has been misclassified as CSRS and a CSRS participant who has been misclassified as FERS.

Section 1605.6 of the proposed revision provides for the employing

agencies to establish procedures for processing claims for correction of agency errors. This section also provides time limits for filing such claims. The proposed revision retains without substantive change the rules that apply to claims filed with employing agencies under existing § 1605.8.

Subpart C applies to errors committed by the Board or the TSP recordkeeper, not errors committed by employing agencies. Some Board or recordkeeper errors, as addressed in § 1605.7, must be corrected by crediting earnings (positive or negative) to a participant's account in order to make the participant whole with respect to earnings the account would have received had the error not occurred. Such payments of lost earnings are, in effect, paid by the rest of the TSP participants, as if they were administrative expenses of the Plan. Such lost earnings should not be confused with those payable under Part 1606, which are paid not by the Plan but by employing agencies that make errors relating to TSP accounts. Section 1605.7 also covers other errors that can be corrected by the TSP, such as reversal of taxable loan distributions caused by Board or TSP recordkeeper errors or erroneous processing of court orders.

Section 1605.8 of the proposed revision contains rules for processing claims for correction made by Plan participants to the TSP recordkeeper or the Board. The proposed rules adopt the informal claims process that has evolved over the course of the Board's operations. Claims may be made in writing to the TSP recordkeeper or to the Board. There is no required format for presenting a claim; a letter setting forth the nature of the claim and the correction sought is sufficient. A participant may request review by the Board of a denial issued by the TSP recordkeeper. All decisions by the Board are final administrative decisions. Section 1605.8 also contains time limits for filing claims or requesting reconsideration of the denial of a claim by the TSP recordkeeper.

Subpart D contains miscellaneous provisions not addressed by other subparts of the proposed revision.

Section-by-Section Analysis

Subpart A—Definitions

Section 1605.1 contains definitions of terms used in this part. Important additions to this section are the definitions of ''employing agency error,'' ''Board error,'' and ''recordkeeper error.'' These terms warrant definition because they describe the errors that give rise to corrections under this part.

The definitions are intentionally broad so that participants will be encouraged to seek correction whenever they are denied rights given in applicable statutes or regulations. When the Board, the TSP recordkeeper, or an employing agency fails to follow procedures provided in bulletins or other communication materials provided to participants or employing agencies, participants should be able to expect that those procedures will be followed, and to obtain correction under this part when they are not. However, other forms of relief, such as punitive damages or consequential damages, are not statutorily authorized.

Subpart B—Employing Agency Errors

Section 1605.2 applies whenever an employing agency error causes a participant's TSP account not to receive all of the contributions it should receive, whether employee contributions, employer contributions, or both.

Section 1605.2(b) applies to missed employer contributions. An employing agency's obligation to make agency automatic (1%) contributions is unrelated to any decision by the participant whether to make employee contributions. Under 5 U.S.C. 8432(c)(1)(A), if a FERS employee receives basic pay, he or she is entitled to receive agency automatic (1%) contributions. When an employing agency discovers that it has failed to provide them, it should promptly contribute the correct amount, in a lump sum, to the affected participant's account. The proposed revision eliminates the requirement in the existing regulations that the contributions be made within 30 days of the agency's discovery of the error, in favor of a requirement that the contributions be submitted ''promptly.'' Although this requirement provides greater flexibility than the previous standard, experience shows that prompt action will rarely require more than 30 days; it is anticipated that in most cases much fewer than 30 days will be sufficient. The employing agency may also be required to submit lost earnings records under Part 1606.

Similarly, if an employing agency has made proper employee contributions on behalf of a FERS participant, but has failed to make all or any part of the agency matching contributions to which the participant is entitled, it must promptly make those contributions in a lump sum upon discovery of the error. Such contributions may also be subject to lost earnings under Part 1606.

Under no circumstances may an employing agency submit agency matching contributions associated with employee contributions that have not yet been made. For instance, if a participant makes up missed employee contributions under § 1605.2(c), then under § 1605.2(c)(7) any associated agency matching contributions must be made throughout the schedule of makeup contributions. In that situation, no lump sum deposit of agency matching contributions is permitted. If the schedule of makeup contributions is suspended or terminated, then the associated agency matching contributions will similarly be suspended or terminated.

Under proposed §§ 1605.2(c) (1) and (2), in order to facilitate submission of any related lost earnings records by the employing agency, the Board has determined that the agency should have the flexibility to establish the schedule in a manner other than equal contributions. In some cases, this will enable the employing agency to avoid having to submit two or more lost earnings records (for agency matching contributions) having the same beginning date but different ending dates. Except to the extent necessary to accomplish that purpose, however, employing agencies are encouraged to work with participants to establish schedules providing for relatively equal makeup contributions.

The Board has established a ceiling on the number of pay periods over which the makeup contributions may extend. This was done to allow participants sufficient time to make up missed contributions without undue financial burden and, at the same time, avoid an undue administrative burden on the employing agencies resulting from extended schedules of makeup contributions. The limit is four times the number of pay periods over which the error(s) occurred. The agency may, however, shorten that maximum period to no less than twice the number of pay periods over which the error(s) occurred. It is expected that employing agencies will exercise their discretion to shorten the maximum schedule of makeup contributions only if there are compelling administrative reasons to do so.

Under § 1605.2(c)(4), the makeup employee contributions are not counted against the percentage limit on TSP contributions per pay period. Because the makeup contributions merely allow the participant to make contributions that should have been made in earlier pay periods, the additional contributions are statutorily authorized. However, the Internal Revenue Code annual limits on contributions found at 26 U.S.C. 402(g)(1) and 26 U.S.C. 415

contain no exceptions for contributions that should have been made in prior years. The Board has no authority to waive the Internal Revenue Code annual limits. Section 1605.2(c)(5) permits any makeup contributions that cannot be made in any year because of the Internal Revenue Code annual limits to be carried forward into subsequent years.

If application of the Internal Revenue Code annual limits is anticipated when the schedule of makeup contributions is established, the schedule can be designed to suspend contributions upon reaching the limit for any calendar year. Even if a schedule is not designed in this manner, the schedule may be suspended at the participant's request if necessary to avoid losing the opportunity to make regular TSP contributions. A similar suspension of the schedule is permitted when the participant does not have sufficient net pay to make the contribution called for by the schedule. A period of suspension does not count against the ceiling on the number of pay periods over which the schedule may extend.

Under § 1605.2(c)(6), a participant may elect to terminate a schedule of makeup contributions at will, but if he or she does so, that termination (as opposed to a suspension due to the Internal Revenue Code annual limits or insufficient net pay) is irrevocable. Also, once a schedule of payments begins, a participant may not make partial contributions under the schedule as an alternative to terminating the schedule.

If a participant separates from Federal service before completing the schedule of makeup contributions, the participant may elect to have the remaining makeup contributions contributed from his or her final paycheck, without regard to the percentage limits (5% or 10%) contained in FERSA (but still subject to the Internal Revenue Code annual limits). Contributions may only be deducted from pay that constitutes basic pay. For example, no contributions may be deducted from a lump-sum payment of annual leave, which is not basic pay.

If there are further makeup contributions remaining on the schedule after the final paycheck, they may not be made up through any other method of contribution to the TSP. The participant's only remedy in that situation would be a direct action against the employing agency under 5 U.S.C. 8477 for lost benefits caused by the employing agency error (this may include, for example, lost opportunity to receive matching contributions and lost tax advantages). The Board anticipates that, in most cases, the participant and employing agency will be able to reach an administrative settlement of the participant's claim without involving the TSP and without the need to resort to the Federal courts.

Under § 1605.2(c)(8), any makeup employee contributions and makeup employer contributions must be reported by the employing agency for investment among the TSP investment funds using the participant's investment fund allocation election, if any, that is in effect at the time the makeup contributions are made. If no such allocation election is in effect at that time, the makeup contributions must be reported by the employing agency for investment in the G Fund. The money will not, in other words, be reported by the employing agency for investment in the investment fund(s) to which it would have been contributed had the error not occurred.

The investment of the makeup contributions pursuant to the participant's current investment allocation does not, however, control any calculation of lost earnings on the makeup contributions. That calculation will be performed under the rules set forth in Part 1606, based on tracking by the TSP recordkeeper of the investment fund(s) in which the money would have been invested from the date it should have been contributed to the date the makeup contribution was actually made. In addition, under Part 1606, the processing of lost earnings records may cause money to be moved among the investment funds, in order to place the account in the position it would have attained had the error not occurred.

Section 1605.2(c)(10) provides that makeup employee contributions may only be made by payroll deduction. Moreover, those payroll deductions may only be made from pay that constitutes basic pay. Makeup contributions may not be deducted from a final lump-sum payment of annual leave or from any other pay that does not constitute basic pay, such as the pay of a temporary employee.

Section 1605.2(c)(11) serves as a reminder to employing agencies that correction under Part 1605 may not be sufficient to meet their obligation to correct agency contribution errors. It may also be necessary to submit lost earnings records under Part 1606.

Section 1605.3 governs removal of erroneous contributions. This can arise in a multitude of circumstances, such as where a participant elects to contribute 1% of basic pay and the agency erroneously contributes 10% because of a data entry error, where an agency erroneously contributes matching contributions to the account of a CSRS participant who was temporarily (and incorrectly) classified as FERS, or when a participant erroneously classified as FERS chooses, upon learning of the proper retirement classification, to obtain a refund of contributions made to his or her account.

Under § 1605.3(b)(1), the employing agency must submit a separate negative adjustment record for each pay period involved. Each record must indicate the pay date for which the contribution was made, the amount of the contribution, the source(s) of the contribution, and the investment fund(s) to which the contribution was reported for investment by the employing agency. This information allows the TSP recordkeeper to verify that the contribution was in fact made and to calculate the investment gains or losses on the money for the period it was erroneously invested in the TSP. The calculation is done by tracking the monthly earnings of the investment fund(s) in which the erroneous contribution was invested, including consideration of how such contributions were reallocated among the investment funds as a result of any interfund transfer processed for the account during the relevant period of time.

As referred to in § 1605.3(b)(2), the Board has distributed to employing agencies detailed instructions concerning the submission of negative adjustment records. The Board may, from time to time, issue additional guidance or may change guidance that has been issued. When this occurs, the new information will be circulated to employing agencies with sufficient time for them to implement any changes to their payroll or other administrative systems that may be required by the new information. Employing agencies are required to comply with all such instructions, including providing any additional information those instructions may require.

Section 1605.3(c) provides rules for processing negative adjustment records. Most of the processing responsibility is placed upon the TSP recordkeeper. Upon receipt of negative adjustment records, the TSP recordkeeper must edit them to ensure compliance with established conventions and to ensure that the records can be successfully processed. As soon as the edit process is completed, all acceptable adjustment records are placed in approved status for processing. If that occurs by the second-to-last business day of a month, the records will be processed as of the end of that month. If they are not accepted until the last business day of a month, they will be processed as of the end of the following month. The TSP recordkeeper cannot guarantee how long the edit process will take, although

it frequently takes only one to two days if there are no problems with the data. In order to ensure prompt processing, employing agencies are advised to submit negative adjustment records as early as possible during a month.

Under § 1605.3(c)(2), the TSP recordkeeper will separately compute the earnings attributable to the contributions for each pay date and source of contributions. The TSP recordkeeper will also determine the investment fund(s) in which the money being removed is invested. This requires applying the monthly earnings allocation factors for the relevant investment fund(s), as well as tracking the location of the money through any interfund transfers that occur after the erroneous contributions. Subject to the rules set forth in § 1605.3(c)(3), money will be removed from the investment fund to which it has been traced.

In determining investment gains and losses for erroneous contributions submitted on a given pay date, each source of contributions is treated separately. That is, investment gains and losses for the different TSP investment funds within a source of contributions will be netted against each other, but net gains or losses for different sources of contributions will not be netted against each other. Any other treatment would be inconsistent with the different character of the funds attributable to the three sources of contributions. For example, employee contributions are eligible to be borrowed, whereas agency matching contributions are not. Thus, if gains on employee contributions were offset against losses on employer contributions, the participant would not have as much money available to be borrowed as without such netting. Similarly, because only agency automatic (1%) contributions (and attributable earnings) are subject to the vesting requirements of 5 U.S.C. 8432(g), netting gains or losses on those contributions against the other two sources would improperly state the amount of money subject to the vesting requirement.

For similar reasons, § 1605.3(c)(3)(ii) prohibits using money in one source of contributions to return funds to an agency in connection with a negative adjustment submitted for another source of contributions. For example, if a negative adjustment to employee contributions requires returning $300 to the employing agency, and the participant only has $200 of employee contributions in his or her account (e.g., because of a loan that reduced the balance of employee contributions to $200), the additional $100 will not be returned to the employing agency from employer contributions. Rather, the negative adjustment to employee contributions will be deleted (i.e., not processed) and the employing agency may resubmit the negative adjustment record at a later time when the participant has sufficient employee contributions to cover it (e.g., due to loan repayments or new contributions).

In contrast to netting across sources of contributions, § 1605.3(c)(3)(iii) provides that within a source of contributions, gains and losses will be netted across the TSP investment funds. This is appropriate because such netting does not involve monies that are of a different character. The legal requirements applicable to all agency automatic (1%) contributions, for example, are the same regardless of the investment fund in which those monies are invested. If a negative adjustment to one source of contributions is tracked by the TSP recordkeeper to one investment fund, but there is not sufficient money in that investment fund to cover the entire adjustment, the money will be taken *pro rata* from the other investment funds. All of the money from the same source of contributions is considered to be of the same character.

Sections 1605.3(d) and (e) explain, separately for employee contributions and employer contributions, the rules for determining how much money is returned to the employing agency in connection with a negative adjustment record. Under § 1605.3(d)(1), if there is a net investment gain on an employee contribution, the employing agency receives the full face value of the negative adjustment. With one exception described in § 1605.9(a) (relating to employees ineligible to have an account in the TSP), the earnings on the employee contributions remain in the participant's account. Leaving the earnings in the account compensates the participant for the fact that he or she did not otherwise have use of the money that the employing agency erroneously contributed. The earnings cannot be paid out of the Plan to the participant at the time the negative adjustment record is processed, however. This is because such a payment, as opposed to the refund of the erroneous contributions themselves, would be a taxable distribution from the TSP that is not permitted under FERSA prior to the participant's separation from Federal service. When the participant separates, he or she may withdraw the earnings, along with any other sums in the account, under the normal rules for withdrawal from the TSP.

Section 1605.3 (d)(2) addresses investment losses on employee contributions. The employing agency receives only the amount of the erroneous contribution minus the amount of the investment loss. However, the investment loss does not change the agency's responsibility to refund to the participant the full face amount of the erroneous contribution, where appropriate. The net effect is that the employing agency is required to absorb the investment loss on money that was only contributed to the TSP on account of the agency's error. It would be inequitable to require the participant to absorb the risk of loss on the money. The revised rule, which comports with current practice, effectively prevents the employing agency from putting a participant's money at risk without proper authorization.

Section 1605.3(d)(3) makes it clear that if an employing agency removes erroneous employee contributions, it must also submit negative adjustment records for any associated agency matching contributions. This is an extension of the general principle that no agency matching contributions may be made unless and until associated employee contributions are actually made. This principle cannot be circumvented by an employing agency's removing the employee contributions after agency matching contributions are made, and leaving the agency matching contributions in the TSP.

Section 1605.3(e) addresses removal of erroneous employer contributions from participants' accounts. Section 1605.3(e)(1) provides that erroneous employer contributions may only be returned to the employing agency if the negative adjustment record is processed within one year of the processing of the contribution. This rule, which is contained in the existing regulations, is based on guidance issued by the Internal Revenue Service. If more than one year elapses, the employing agency must still submit any appropriate negative adjustment records to remove erroneous contributions from the participant's account. However, in this case, instead of the employing agency's receiving a refund of the erroneous contributions, the amount of the erroneous employer contribution (plus or minus investment gains or losses) is removed from the account and used to offset TSP administrative expenses, thereby benefitting the rest of the TSP participants. In order to avoid this result, employing agencies must identify and remove erroneous employer contributions within one year of their submission.

Section 1605.3(e)(2) provides that if there is an investment gain on erroneous employer contributions that are to be

returned to the employing agency, the agency receives a refund of only the face value of the negative adjustment. The agency may not receive the benefit of the investment gain on the money. At the same time, the individual participant should not receive an earnings windfall due to the fortuity of an employing agency error. Thus, the earnings on erroneous employer contributions are removed from the account and used to offset TSP administrative expenses.

Under § 1605.3(e)(3), if there is an investment loss on the erroneous employer contributions that are either returned to the employing agency or removed from the account and used to offset TSP administrative expenses, the amount removed from the account will be the amount of the contribution less the investment loss. If the employing agency received the full amount of the erroneous contribution, then the amount of the loss would have to be made up out of the participant's money. The participant should not have to absorb an investment loss on employer money that was erroneously placed in his or her account.

The TSP recordkeeper has issued three TSP bulletins containing detailed procedures and information concerning the submission, processing, and accounting for negative adjustment records. Those bulletins, Nos. 90–22, 90–23, and 90–28, can be obtained from the Board or TSP recordkeeper upon request.

Section 1605.4 contains the rules for making up TSP contributions related to back pay awards or other retroactive pay adjustments. Section 1605.4(a) governs situations in which the participant was separated and subsequently reinstated with back pay. Under those circumstances, the participant could not have had a TSP contribution election in effect during the period of separation. Accordingly, under § 1605.4(a)(1), immediately upon reinstatement the employing agency must give the participant an opportunity to make a current TSP contribution election on Form TSP–1, regardless of whether the reinstatement occurs during a TSP open season or TSP Election Period.

Under § 1605.4(a)(1), the effective date of the current Form TSP–1 will be the first day of the first full pay period in the most recent TSP election period. If the participant is reinstated during a TSP open season but before the election period, he or she may also submit a Form TSP–1 that will become effective the first day of the first full pay period in the following election period. For example, if these rules had been in effect in 1995 and a participant was reinstated on January 2, 1995, the effective date of the current Form TSP–1 would have been January 15, 1995 (the first day of the first full pay period in the most recent election period). If the participant had been reinstated on March 22, 1995, the effective date of the current Form TSP–1 would have been January 15, 1995. If a participant had been reinstated on May 20, 1995, the effective date of the current Form TSP–1 would have been January 15, 1995. In addition, this participant could have submitted another Form TSP–1 to become effective on July 3, 1995 (the first day of the first full pay period in the following election period).

Under § 1605.4(a)(2), the participant has several choices concerning makeup contributions for the period of erroneous separation. If he or she had a contribution election on file at the time of separation, the contribution election will be reinstated for the period of separation unless the participant affirmatively elects not to have those contributions made up. Alternatively, the participant may also affirmatively elect not to make up those contributions that would have been made from the date of separation through the end of the next TSP open season after separation. Finally, the participant may, for any open season after the one during which the separation occurred, elect any amount of makeup contributions that he or she would have been eligible to make had the separation not occurred.

As provided in § 1605.4(a)(3), the decisions made by the participant after returning do not include decisions concerning the investment funds in which the money would have been invested had the separation not occurred, nor can the participant choose to receive lost earnings for the period of separation based on the investment funds elected on a Form TSP–1 that was in effect at the time of separation. The effectiveness of that election came to an end when the participant separated, even though the separation was involuntary and ultimately found to have been erroneous. Any decisions made after the participant was reinstated concerning the investment funds to use in the lost earnings calculation would be in direct violation of the principles set forth in Part 1606 (which applies to back pay awards and other retroactive pay adjustments, 5 CFR 1606.4(b)), in particular 5 CFR § 1606.11(c).

Thus, § 1605.4(a)(3) provides that all lost earnings will be calculated at the G Fund rate of return up to the date of any interfund transfer processed during the period of separation. From the effective date of the interfund transfer forward, the amount of the earnings will be calculated based on the allocations elected on the interfund transfer request. The earnings (and related contributions) will also be moved among the investment funds to reflect the funds in which they would have been invested had the interfund transfer election been applied to them.

Under § 1605.4(b), if the participant remained em- ployed by the Federal Government for the period covered by the back pay award or other retroactive pay adjustment, the participant is bound by the contribution election that was in effect during that period. Thus, if the participant received less pay as a result of the action that led to the back pay award or other retroactive pay adjustment, or was otherwise limited in his or her ability to make the contributions that had been previously elected, the participant must make up the missed contributions. In this situation, because any investment elections made by the participant would have remained in effect, the lost earnings are calculated based on the investment elections made by the participant for the applicable period. The employing agency is also responsible for making any agency matching contributions and agency automatic (1%) contributions that would have been required had the action that led to the payment of back pay or of another type of retroactive pay adjustment not occurred.

Section 1605.4(c)(1) provides that under both § 1605.4(a) and § 1605.4(b), any makeup employee contributions associated with the back pay award or other retroactive pay adjustment must be withheld from the award or adjustment and contributed to the participant's TSP account by the employing agency. It is not permissible for the employing agency to pay the back pay award or other retroactive pay adjustment to the participant and then accept a check or other form of payment from the participant for contribution to the TSP account. If the additional contributions associated with the back pay award or other retroactive pay adjustment would cause, or are anticipated to cause, a participant to exceed the Internal Revenue Code annual contribution limits, they may be carried forward (along with associated agency matching contributions) as makeup contributions to be deducted from pay in subsequent years.

Section 1605.4(c)(2)(i) requires employing agencies to submit agency matching contributions and agency automatic (1%) contributions associated with a back pay award or other retroactive pay adjustment.

Section 1605.4(c)(2)(ii) provides rules concerning the submission and processing of contributions associated with back pay awards and other retroactive pay adjustments. Although lost earnings on contributions associated with a back pay award or other retroactive pay adjustment are calculated based on the investment election in effect during the relevant period, the contributions must be reported by the employing agency for investment based upon the participant's investment allocation election in effect at the time of payment of the back pay award or other retroactive pay adjustment, rather than to the investment fund(s) previously elected. If there is no current election, the contributions must be reported by the employing agency for investment in the G Fund.

Section 1605.4(e) provides an opportunity for participants to restore funds to their TSP accounts if the separation upon which the withdrawal of the funds was based is reversed. This opportunity cannot be exercised by participants who have elected to receive annuities. If a participant wishes to restore his or her account, he or she must so notify the Board within 90 days of reinstatement or lose that right.

Section 1605.5 governs employing agency misclassifications of retirement coverage. CSRS participants are not permitted to make contributions in excess of 5%. Under § 1605.5(a)(1), if a CSRS participant is erroneously classified as FERS, the employing agency must remove any employee contributions in excess of 5% of basic pay from the participant's account by submitting negative adjustment records in accordance with § 1605.3. In addition, it is recognized that for FERS employees the prospect of receiving agency matching contributions is often a significant inducement to make contributions to the TSP. A CSRS participant erroneously classified as FERS would have made any decision to contribute to the TSP with the expectation of receiving agency matching contributions on the first 5% of basic pay. When those agency contributions are removed from the account, it would be inequitable to deny the participant the option of removing all of the employee contributions. Accordingly, § 1605.5(a) provides that option.

Section 1605.5(a)(2) describes a routine procedure pursuant to which the TSP recordkeeper will remove employer contributions from a previously misclassified participant's account once the account no longer has employer contributions that have been in the account for less than one year. The employing agency may continue to submit negative adjustment records as long as there are contributions that can be returned to the employing agency under the one-year rule contained in § 1605.3(e)(1). Once all of the employer contributions have been in the account for one year or more, the employing agency cannot receive a refund of any of those contributions; submission of a negative adjustment record would cause the employer contributions (and associated earnings) to be removed from the account and be used to offset TSP administrative expenses. The TSP record keeper will, on its own initiative, remove the remaining employer contributions and associated earnings from the account.

In contrast to a CSRS participant misclassified as FERS, when a FERS participant is erroneously classified as CSRS, any election to contribute would have been made by the participant with the knowledge that he or she will receive no agency contributions. If the participant wished to contribute without receiving agency contributions, it follows that the participant would also have contributed at least the same amount if the added inducement of agency contributions were present. Thus, § 1605.5(b) does not allow such participants to elect to remove contributions made while misclassified as CSRS. However, because the participant has learned for the first time that the added inducement of agency contributions is available, the participant must be provided, as set forth in § 1605.5(b), an opportunity to elect makeup employee contributions in addition to those, if any, that were elected while misclassified as CSRS. Thus, for example, if the participant contributed 2% of basic pay while misclassified as CSRS, he or she must be provided the opportunity to make up an additional 8% that he or she would have been able to contribute if properly classified as FERS. If the participant did not contribute at all while misclassified, he or she may make up the full 10% contribution. The employing agency must promptly make, in a lump sum, all agency matching contributions attributable to any employee contributions that were made during the period of misclassification. In addition, the employing agency must, in accordance with § 1605.2(c)(7), make any applicable agency matching contributions attributable to the participant's makeup contributions, if any. Regardless of whether any employee contributions are made up, the employing agency must also contribute, in a lump sum, the appropriate agency automatic (1%) contributions.

Section 1605.6 adopts, without significant substantive change, the provisions of existing § 1605.8 concerning participants' claims for correction filed against their employing agencies. The rules for filing claims against the Board or the TSP recordkeeper are in a separate section of the proposed revision, § 1605.8.

One change contained in the proposed revision is elimination of existing § 1605.8(a)(1) relating to employing agencies' referral of participants' claims to the Board. Experience has proven this provision to be unnecessary. As a practical matter, participants are able to discern whether a claim is properly filed with the employing agency or the Board. In those rare cases in which the participant is not sure, he or she may wish to file a claim with both the employing agency and the Board. It does not appear that in such cases there is a substantial risk of inconsistent rulings that would leave the participant without relief, because the Board and the employing agency should consult to determine which, if either, is responsible for any error that may have occurred. Moreover, any inconsistent rulings would ultimately be subject to judicial review under 5 U.S.C. 8477.

Another change to the claim procedures is the provision in § 1605.6(a)(1) that the 30-day period for the employing agency to issue an initial decision on the participant's claim may be extended if the employing agency provides the participant with good cause for needing more time. Experience has shown that a full investigation of potential errors may legitimately take longer than 30 days.

Similarly, experience has shown that review of an employing agency's denial of a participant's claim can legitimately take longer than the 30 days provided in the regulations. Accordingly, § 1605.6(a)(3) also adopts a good cause provision for extending the time period for a decision.

As under the existing regulations, the burden to correct administrative errors lies, in the first instance, with the employing agency. If correction is not forthcoming, the participant may, within the time limits set forth under § 1605.6(b) of the proposed revision, file a claim with his or her employing agency. If the participant fails to do so, he or she has not exhausted his or her administrative remedy and, therefore, is not eligible to file suit to compel the employing agency to correct the alleged error. However, regardless of whether

the participant files a timely claim for correction, the employing agency may, within its discretion and otherwise in accordance with this part, correct any administrative errors it determines to have occurred. Experience has shown that most employing agencies, in a good faith effort to ensure that their employees receive all of the retirement benefits to which they are entitled, are willing to correct their errors, even after the time for filing a claim has passed. Although employing agencies are encouraged to continue to do so, participants are urged to be diligent in reviewing their earnings and leave statements and their semiannual TSP Participant Statements to promptly identify any errors, and to protect their rights by filing timely claims when necessary.

Section 1605.6(b)(1)(ii) clarifies when the one-year period for submitting a claim commences with respect to retirement code classifications. In particular, the proposed revision states explicitly that mere notice to a participant of his or her retirement code classification is not sufficient to trigger the one-year claim period if that classification turns out to be erroneous. For many participants, the determination of proper retirement classification requires application of a complex set of rules. The Board has determined that it would be unjust to presume that all employees are capable of making this determination and therefore to hold them responsible for failing to immediately identify an erroneous classification. Similarly the Board is concerned that all participants may not appreciate the potential impact of a retirement classification change on their TSP accounts.

The rule adopted requires some other information that would indicate to the participant that he or she has been erroneously classified. In appropriate circumstances, the employing agency may determine that notice of a change in retirement classification constitutes sufficient notice that the earlier classification was erroneous. In addition, the proposed rule requires that in order to trigger the one-year time limit the employing agency must provide the participant with a written notice that specifically mentions the TSP and that the retirement code classification could have implications for the participant's TSP account. Of greatest concern is that the employing agency should advise a FERS employee who was misclassified as CSRS that the employee should consider making makeup contributions for the period of misclassification. Unless and until the appropriate notice is provided, the one-year time limit will not commence.

Subpart C—Board or TSP Recordkeeper Errors

Under § 1605.5 of the existing regulations, the only Board or TSP recordkeeper error addressed is erroneous posting of contributions. Section 1605.7 of the proposed revision addresses a broader range of potential Board or TSP recordkeeper error. The provisions of this section are derived from the experience of the Board in administering the TSP.

Section 1605.7(a) addresses situations in which a Board or TSP recordkeeper error causes a participant's account to receive credit for less earnings than it would have received had the error not occurred. Such lost earnings should not be confused with agency-paid lost earnings under Part 1606. Paragraph (a)(1) sets forth the general rule that the account should be made whole by crediting to it the difference between the credit the account received and that which it would have received had the error not occurred. Paragraph (a)(1) also describes the most common situations giving rise to lost earnings. As stated in the text, however, the situations described in paragraphs (a)(1)(i)–(iii) do not constitute an exhaustive list of the circumstances warranting payment of lost earnings attributable to Board or TSP recordkeeper error.

Section 1605.7(a)(1)(i) requires the TSP to calculate and post lost earnings (positive or negative, as the case may be) when Board or TSP recordkeeper error causes a delay in crediting money to a participant's account. Although such errors are relatively rare, given the large volume of transactions processed by the Plan, some situations have occurred more frequently than others. One is where there is a delay in crediting contributions to a participant's account. Most often this occurs because of a delay in processing an employing agency's payroll submission. Where the delay does not prevent the payroll tape from being processed in the month during which it should be processed, no lost earnings correction is required because, under the Board's earnings allocation algorithm, participants receive the same credit for the month of contribution regardless of when during the month the contributions are credited. Where the error does cause a delay that continues into one or more months after the one during which the contributions should have been credited, the participants should be made whole. Most of these cases affect more than one participant; all participants whose contributions are on a tape that was delayed must be credited (charged) with additional investment earnings (losses), depending on the investment experience of the funds involved. If the earnings are calculated to be positive (due to investment gains), then the additional amounts posted to the accounts of the affected participants are, in effect, charged to the rest of the TSP participants through the earnings allocation process. Conversely, if there are investment losses, the amounts deducted from the affected participants' accounts are, in effect, credited to the rest of the TSP participants through the earnings allocation process.

Other possible scenarios covered by § 1605.7(a)(1)(i) are delays in crediting loan payments or loan prepayments, or delays in reinvesting returned checks.

Section 1605.7(a)(1)(ii) covers situations in which loan or withdrawal checks are improperly issued. The error can take several forms, such as issuance to an address different from that provided to the TSP recordkeeper, issuance of a payment from the wrong account, or premature payment of a withdrawal. In all such cases, the participant ceases to receive credit for earnings as of the end of the month for which the withdrawal is made effective. The participant does not again receive full credit for earnings on the improperly disbursed funds until the month after the money is redeposited in his or her account. Thus, the Plan must make up all earnings for the period of disinvestment.

Errors addressed under paragraph (a)(1)(ii) are, however, subject to the limitation contained in paragraph (a)(2). That is, if a participant receives funds that should not have been disbursed from his or her TSP account, he or she must promptly call the error to the Board's attention and return the funds for redeposit to the account. If the participant needlessly delays in returning the funds, or invests the funds before returning them to the TSP, then the participant may be deemed to have had the use of the funds during this period. If that occurs, the participant's account will not receive lost earnings for the period that he or she had use of the money. In general, determinations concerning whether a participant has had the use of money under paragraph (a)(2) must be made on a case-by-case basis, after an evaluation of all of the specific facts and circumstances. A standard of reasonableness will be applied by the Board.

Section 1605.7(a)(1)(iii) provides for payment of lost earnings in cases where a Board or TSP recordkeeper error causes a participant's account to receive earnings based on an incorrect

investment fund allocation. This infrequent occurrence can take place when the TSP recordkeeper fails to process an interfund transfer request or processes it incorrectly. As described in paragraph (a)(3), participants affected by this type of error will be given a choice whether they wish to have it corrected. If so, the correction will involve calculating and crediting lost earnings as well as reallocating the account balance as it would have been had the error not occurred. A participant cannot choose the former without the latter, or *vice versa*. Section 1605.7(a)(4) establishes the investment funds for which the lost earnings calculations should be made. If the participant continued to have a TSP account during the period of the error, or would have had an account if the error had not occurred, then the rates of return the account would have earned during the relevant period will be used. For example, assume that separated Participant A requests a withdrawal, but the recordkeeper erroneously disburses Participant B's account as a result of a data entry error. Participant B promptly returns the erroneous disbursement, but his account loses earnings for a month. If Participant B had his entire account invested in the C Fund just prior to the erroneous disbursement, then he will receive lost earnings based on the C Fund rates of return. The same would be true if the erroneous disbursement from Participant B's account was a loan.

In contrast, assume that separated Participant X requests a withdrawal of his entire account balance as of the end of November 1996. The entire account is properly disbursed as of the end of November 1996, but the TSP recordkeeper erroneously causes the check to be mailed to an outdated address which had been properly changed by the participant. The check is lost and the funds are uninvested for three months, at which time the account is recredited with the amount that was disbursed in November 1996. Because the account would properly have been closed as of the end of November 1996, the lost earnings will be calculated at the G Fund rate of return.

Finally, assume Participant L has an outstanding loan of $5,000 and decides to prepay it. The certified prepayment check is received in early October 1996 but due to TSP recordkeeper error is not credited to the account until December 1996. Since Participant L continued to have a TSP account during the period of the erroneous disinvestment, the lost earnings will be credited based on the investment funds in which the money would have been invested had the prepayment been properly credited in October. These rules are designed to approximate the earnings that the participant would have received if the error had not occurred. For periods when the TSP account would have been closed even if the error had not occurred, applying the G Fund rate provides the (former) participant with a reasonable positive rate of interest. It is not practicable for the Board to speculate on the earnings which the participant would have received on the money outside the Plan.

Section 1605.7(b) provides for reversal of erroneous declarations of taxable loan distributions.

Section 1605.7(c) makes explicit that the Executive Director has the discretion to make other corrections not specifically addressed elsewhere in § 1605.7. The specific types of corrections listed in § 1605.7 are not exclusive, and Board or TSP recordkeeper errors other than those addressed may properly give rise to lost earnings or other forms of corrective relief. Moreover, even if no Board or TSP recordkeeper error is involved, the Executive Director may determine that payment of lost earnings or other corrective relief is warranted under the circumstances. Such determinations must be made by the Executive Director on a case-by-case basis. In making these determinations, the Executive Director must comply with his fiduciary responsibilities under FERSA to all of the participants of the TSP. Thus, the Executive Director will consider factors such as the administrative cost of implementing the correction, the cost to the TSP as a whole of paying any lost earnings, and the harm to the affected participant if no correction is made.

Section 1605.8 contains the provisions for filing claims with respect to Board or TSP recordkeeper error. The primary change from the existing regulations is to adopt a more informal process than that originally contemplated. This decision is based on the Board's experience in handling claims for correction. It has been determined that a more informal, flexible process is beneficial to all parties concerned.

Under § 1605.8, claims may be made either to the TSP recordkeeper or to the Board. The proposed revisions provide flexibility regarding which of those parties will process the claim. If the claim is submitted to the TSP recordkeeper, it may either be processed by the recordkeeper or sent to the Board to be processed. If the latter, or if the claim is initially submitted to the Board, the decision of the Board is final. If an initial decision is issued by the TSP recordkeeper, the participant may request review by the Board of any denial of all or any part of the claim. The decision by the Board on review is final.

Subpart D—Miscellaneous Provisions

Section 1605.9 contains miscellaneous provisions. Paragraph (a) addresses residual earnings. If all employee contributions to a participant's account are removed, but earnings on those contributions remain in the account under the rules of this part, the earnings will not necessarily be removed from the account merely because there are no longer any employee contributions. This will usually occur when an agency erroneously contributes money to the account of a CSRS participant who is eligible to contribute to the TSP but has not elected to do so. When the contributions are removed, the earnings on the employee contributions will remain in the account. Such a participant will, like all other TSP participants, be entitled to withdraw his or her account balance in full upon separating from the Federal Government under the same rules that apply to withdrawal of other money in a participant's account. In contrast, an employee who was never eligible to contribute to the TSP is not, by law, entitled to have a TSP account or to receive benefits from the TSP. If residual earnings remain in the account of such an employee after all contributions have been removed, they will be removed from the account and applied against TSP administrative expenses. Any remedy the employee may wish to pursue would be against his or her employing agency and would not involve the Board, which is not in a position to provide any relief to the employee.

Paragraph (b) provides for belated elections to contribute to the TSP because of circumstances beyond the participant's control (but not attributable to employing agency error). This belated election is currently found at 5 CFR 1605.2(b)(1) of the existing regulations. The proposed revision adopts the rule of that provision without substantive change. No makeup contributions are permitted under the circumstances addressed in this provision.

Paragraph (c) contains a cross-reference to Part 1606 for correcting investment in an incorrect investment fund(s). Some employing agencies might be inclined to correct such an error by submitting a negative adjustment record to remove the money from the erroneous investment fund and then recontributing the money to the correct

investment fund. However, the only permissible correction is through Part 1606.

Paragraph (d) provides addresses for the Board and TSP recordkeeper.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

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, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of this regulation 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, or 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 section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, tit. II, 110 Stat. 847, 857–875 (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 General Accounting Office prior to the publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1605

Administrative practice and procedure, Employee benefit plan, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, Part 1605 of chapter VI, Title 5 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Subpart A—Definitions

Subpart B—Employing Agency Errors

Subpart C—Board or TSP Recordkeeper Errors

Subpart D—Miscellaneous Provisions

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

Subpart A—Definitions

§ 1605.1 Definitions.

The following definitions apply for purposes of this part:

Account or *TSP account* means a participant's account in the Thrift Savings Plan;

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) or (c)(3);

Agency contributions means agency automatic (1%) contributions and agency matching contributions;

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Basic pay means basic pay as defined in 5 U.S.C. 8431(3), and it is the rate of pay used in computing any amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the CSRS or the FERS, as the case may be;

Board means the Federal Retirement Thrift Investment Board;

Board error means any act or omission by the Board that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by Subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a through 8440d;

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8432(a), 5 U.S.C. 8351 or 5 U.S.C. 8440a through 8440d;

Employer contributions means agency automatic (1%) contributions and agency matching contributions;

Employing agency means any entity that provides or has provided pay to an individual, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions made by or on behalf of that individual; any entity responsible for submitting TSP loan payments on behalf of an individual; or any other entity that has employed an individual and has provided information that affects or has affected that individual's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

Executive Director means the Executive Director of the Board under 5 U.S.C. 8474;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Federal Government retirement plans;

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS;

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the TSP investment funds;

Investment fund means the C Fund, the F Fund, the G Fund, and any other TSP investment funds created subsequent to [the effective date of the final regulations];

Investment fund election means a choice by a participant concerning how TSP contributions shall be allocated among the TSP investment funds;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings

and to determine the investment fund in which money would have been invested had an error not occurred;

Makeup contributions means employee or employer contributions that are made for an earlier period during which they would have been made but for an employing agency error;

Negative adjustment record means a data record submitted by an employing agency to remove money from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the TSP, to change or discontinue the amount currently being contributed to the TSP (without losing the right to recommence contributions the next open season), or to allocate prospective contributions to the TSP among the investment funds;

Participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error;

Recordkeeper error means any act or omission by the TSP recordkeeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

Source of contributions means either employee contributions, agency automatic (1%) contributions, or agency matching contributions;

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8401–8479; and

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the TSP. As of the effective date of these regulations, the TSP recordkeeper is the National Finance Center, Office of the Chief Financial Officer, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Employing Agency Errors

§ 1605.2 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the contributions to his or her account to which the participant is entitled. This includes, but is not limited to, situations in which an employing agency error prevents a participant from making an election to contribute to the TSP, the employing agency erroneously fails to implement a contribution election properly submitted by a participant, the employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or the employing agency erroneously contributes less to the TSP than it would have contributed had the error not occurred. The corrections required by this section must be made in accordance with this part and procedures provided to employing agencies, from time to time, by the Board or the TSP recordkeeper in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to correction under this section.

(b) *Missed employer contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required to be made under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required to be made under 5 U.S.C. 8432(c)(2) based on employee contributions that have been made, or contributions required to be made under 5 U.S.C. 8432(c)(3), then:

(1) The employing agency must promptly submit, in a lump sum, all such missed contributions to the TSP recordkeeper on behalf of the affected participant. Makeup contributions must be allocated by the employing agency among the TSP investment fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions will be reported by the employing agency for investment in the G Fund.

(2) If applicable, the employing agency must also submit any lost earnings records required under 5 CFR Part 1606.

(c) *Missed employee contributions.* Within 30 days of receiving information from his or her employing agency that indicates that the employing agency acknowledges that an error has occurred that has caused less employee contributions to be made to the participant's account than would have been made had the error not occurred, a participant may elect to establish a schedule of makeup contributions to replace the missed contributions through future payroll deductions, in addition to any regular TSP contributions that the participant is entitled to make. The following rules apply to makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the amount of contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the amounts to be contributed should be established when the schedule is created. The schedule may not exceed four times the number of pay periods over which the errors occurred.

(2) The employing agency may, but need not, set a ceiling on the length of the schedule of makeup contributions which is less than four times the number of pay periods over which the errors being corrected occurred. The ceiling may not, however, be less than twice the number of pay periods over which the errors being corrected occurred.

(3) The employing agency must implement the schedule of makeup contributions as soon as practicable after the participant has made an election to implement a makeup schedule.

(4) Makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP (e.g., 5% of basic pay for CSRS participants, 10% of basic pay for FERS participants), but will be included for purposes of applying the annual limits contained in 26 U.S.C. 402(g)(1) and 26 U.S.C. 415.

(5) A participant's regular TSP contributions will always take precedence over makeup contributions. Thus, 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 current TSP contribution election, to determine whether the makeup contributions, when combined with regular TSP contributions, are expected to exceed the annual limits contained in 26 U.S.C. 402(g)(1) and 415. If so, the participant may elect to have the schedule of makeup contributions established in such a manner that the payments will, at an appropriate time, be suspended until the makeup contributions can be made within the annual limits. In any event, a schedule of makeup contributions may be suspended at any time in order to avoid a situation in which the participant is unable to make regular TSP contributions because of the annual limits. Similarly, a schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If a schedule of makeup contributions is suspended because of the annual limits or because of insufficient net pay, the period of suspension will not be counted against

the maximum number of pay periods the participant has to complete the schedule of makeup contributions.

(6) A participant may elect to terminate a schedule of makeup contributions at any time, but may not elect to make partial payments under the schedule. Any such termination is irrevocable. If a participant separates from employment that makes the participant eligible to contribute to the TSP, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck. No contributions may be made other than by payroll deduction from pay that constitutes basic pay.

(7) To the extent a participant makes up missed employee contributions, the employing agency must contribute any agency matching contributions that would have been made had the employing agency error that caused the missed employee contributions not been made. The agency matching contributions must be made in installments over the course of the schedule of makeup contributions. The participant may not receive matching contributions associated with any employee contributions that are not made up. If the makeup contributions are suspended in accordance with paragraph (c)(5) of this section, the payment of agency matching contributions must also be suspended.

(8) Makeup contributions must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions must be reported by the employing agency for investment in the G Fund.

(9) Where a participant has transferred to a different employing agency from the one at which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether an employing agency error is responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(10) Makeup employee contributions may be made only by payroll deduction from pay that constitutes basic pay. Contributions by check, money order, cash, or other form of payment, directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

(11) If applicable, the employing agency must submit any lost earnings records required under 5 CFR Part 1606.

§ 1605.3 Removal of erroneous contributions.

(a) *Applicability.* This section applies whenever, as a result of an employing agency error, a TSP account contains money that should not have been contributed to the account and which, therefore, must be removed from the account. This includes, but is not limited to, situations in which, because of an employing agency error, employee contributions in excess of those elected by a participant are contributed to the participant's account, employee contributions (and any associated agency matching contributions) are made on behalf of a participant who did not elect to have any contributions made, excess employer contributions are made to a participant's account, or employee contributions are made in excess of the amount permissible because of an improper retirement classification that is subsequently corrected (e.g., a CSRS employee is permitted to make contributions in excess of 5% of basic pay during a temporary misclassification as FERS).

(b) *Negative adjustment records.* (1) In order to remove money from a participant's account, the employing agency must submit, for each pay date involved, a negative adjustment record indicating the amount of the contribution being removed, the pay date for which it was made, the source(s) of the contributions involved (i.e., employee contributions, agency automatic (1%) contributions or agency matching contributions), and the investment fund or funds to which the erroneous contribution was made. A negative adjustment record may be for all or a part of the contributions made for the applicable pay date, investment fund and source of contributions, but for each investment fund and source of contributions the negative adjustment may not exceed the amount of contributions made for that pay date.

(2) Negative adjustment records must be submitted in accordance with this part and with procedures provided to employing agencies from time to time by the Board or the TSP recordkeeper in bulletins or other guidance. Negative adjustment records must also include any additional information required in any such bulletins or other guidance.

(c) *Processing negative adjustment records.* Negative adjustment records will be processed in accordance with the following rules:

(1) Negative adjustment records received and accepted by the TSP recordkeeper by the second-to-last business day of a month will be processed effective as of the end of that month. Negative adjustment records accepted by the TSP recordkeeper on the last business day of a month will be processed effective as of the end of the following month.

(2) When negative adjustment records are processed, the TSP recordkeeper will determine separately, for each pay date and source of contributions involved, the amount of any investment gains or losses on the money the agency seeks to remove from the account and the investment fund or funds in which that money is currently invested. In making these determinations, investment gains and losses from the different TSP investment funds will be netted against each other. Investment gains and losses for different sources of contributions will be treated separately; gains and losses for different sources of contributions will not be netted against each other. The TSP recordkeeper will take into consideration any interfund transfers made effective on or after the date on which the erroneous contribution was processed.

(3) (i) Multiple negative adjustment records in the same processing cycle will be processed in the order of the applicable pay dates, starting with the earliest pay date.

(ii) If the participant's account does not have sufficient funds in the applicable source of contributions to pay the amount of a negative adjustment, the adjustment to that source of contributions will not be processed. Funds may not be taken from another source of contributions to cover the negative adjustment. The employing agency may, at a later date, resubmit the record that was not processed. It will be processed if, at that time, there are sufficient funds for the applicable source of contributions.

(iii) If there are sufficient funds in the applicable source of contributions to pay the amount required by a negative adjustment record, but any of the investment funds does not have sufficient money to pay the portion that is attributable to that investment fund (e.g., because of a loan), then the amount required will be removed from the other investment fund(s), pro rata, based on the participant's total account balance in each investment fund for that source of contributions.

(d) *Employee contributions.* The following rules apply to removal of

employee contributions from a participant's account:

(1) If there is a net investment gain on the erroneous employee contribution made for a pay date, then the full amount of the erroneous contribution will be returned to the employing agency. Subject to § 1605.9(a), the investment earnings on the erroneous contribution will remain in the participant's account.

(2) If there is a net investment loss on the erroneous employee contribution made for a pay date, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss. However, the investment loss does not affect the employing agency's obligation to refund to the participant the full amount of the erroneous contribution.

(3) If an employing agency removes erroneous employee contributions from a participant's account, it must also remove, under paragraph (e) of this section, any associated agency matching contributions.

(e) *Employer contributions.* The following rules apply to removal of employer contributions from a participant's account:

(1) Employer contributions will only be returned to the employing agency if the negative adjustment record submitted to remove the contributions is processed within one year of the date the contribution was processed. If more than one year has elapsed when the negative adjustment record is processed, the amount of the employer contribution plus (or minus) any investment gains (or losses) will be removed from the participant's account and used to offset TSP administrative expenses rather than returned to the employing agency. The employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by whether the contribution has been in the account for more or less than one year at the time the negative adjustment record is to be processed.

(2) Subject to paragraph (e)(1) of this section, if there is a net investment gain within a source of contributions for an erroneous employer contribution, then the employing agency will receive the full amount of the negative adjustment submitted. The earnings attributable to the erroneous contributions in the applicable source of contributions will be removed from the participant's account and used to offset TSP administrative expenses.

(3) Subject to paragraph (e)(1) of this section, if there is a net investment loss within a source of contributions for an erroneous employer contribution, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss.

§ 1605.4 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government employment:

(1) If the participant is reinstated to Government employment, then immediately upon reinstatement the employing agency must give the participant the opportunity to submit a contribution election form (Form TSP–1) to make current contributions. The effective date of the form will be the first day of the first full pay period in the most recent TSP election period. If the participant is reinstated during a TSP open season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(2) The participant must be given the following options for electing makeup contributions:

(i) If the participant had a valid contribution election form (Form TSP–1) on file when he or she separated, upon the participant's reinstatement to Government employment that election form will be reinstated for purposes of makeup contributions, unless a new contribution election form is submitted to terminate all makeup contributions or those contributions that would have been made from the date of separation through the end of the open season that occurred immediately after the separation.

(ii) Instead of making contributions for the period of separation under the reinstated contribution election form, the participant may submit a new election form for any open season that occurred during the period of separation. However, the investment allocation on each Form TSP–1 for the period of separation must be the same as the investment allocation on the current Form TSP–1.

(3) Lost earnings will be calculated and credited to the participant's account, in accordance with 5 CFR part 1606, using the rates of return for the G Fund, unless the participant submitted one or more interfund transfer requests during the period of separation. In the case of interfund transfer requests, the earnings will be calculated using the G Fund rates of return until the first interfund transfer was processed. The contribution that is subject to lost earnings will be moved to the investment fund(s) the participant requested and lost earnings will be calculated based on the earnings for that fund(s). The amount of lost earnings calculated will be posted to the investment fund(s) to which the contribution was moved by the interfund transfer. If there were no interfund transfers processed during the lost earnings calculation period, the amount of lost earnings calculated will be posted to the employee's G Fund account.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was not separated from Government employment:

(1) The participant will only be entitled to makeup contributions for the period covered by the back pay award or retroactive pay adjustment if, for that period, the participant had designated a percentage of basic pay to be contributed to the TSP or had designated a dollar amount of contributions each pay period which had to be reduced (because of an applicable 5% or 10% limit on contributions per pay period) as a result of the reduction in pay that is made up by the back pay award or other retroactive pay adjustment.

(2) The employing agency must compute the amount of additional employee contributions that would have been contributed to the participant's account had the action leading to the back pay award or other retroactive pay adjustment not occurred. The employing agency must also compute the amount of agency matching contributions and agency automatic (1%) contributions that would have been payable had that action not occurred.

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed prior to payment of the award of back pay or other retroactive pay adjustment. The makeup employee contributions must be deducted from the payment of the back pay award or other retroactive pay adjustment and contributed to the TSP, unless the payment of such contributions will cause the participant to exceed the annual contribution limits contained in 26 U.S.C. 402(g)(1) or 26 U.S.C. 415 (taking into consideration the expected regular TSP contributions the participant will make during the year in which the back pay award or other retroactive pay adjustment is paid). To

the extent TSP contributions from the back pay award or other retroactive pay adjustment would cause the participant to exceed the elective deferral limits contained in 26 U.S.C. 402(g) or 415, such contributions may be carried forward into subsequent years and made (along with attributable agency matching contributions) pursuant to a schedule of makeup contributions established under the rules set forth in § 1605.3(c).

(2) (i) If employee contributions are deducted from a back pay award or other retroactive pay adjustment, the employing agency will be responsible for contributing the associated agency matching contributions at the same time the employee contributions are made. Regardless of whether a participant elects makeup employee contributions, the employing agency must make, in a lump sum payment, all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(ii) Any makeup contributions (both employee and employer) associated with a back pay award or other retroactive pay adjustment must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's investment fund election in effect at the time the makeup contributions are made. If no such election is on file, the contributions must be reported by the employing agency for investment in the G Fund.

(d) The employing agency must pay any lost earnings on TSP contributions derived from back pay awards or other retroactive pay adjustments that are required to be paid under 5 CFR part 1606.

(e) If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, then the participant will have the option, which must be exercised by notice to the Board within 90 days of reinstatement, to restore to his or her TSP account the amount withdrawn. The right to restore the withdrawn funds will expire if the notice is not provided to the Board within 90 days of reinstatement. No earnings will be paid on any restored funds.

§ 1605.5 Misclassification of retirement coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected—

(1) The employing agency must, under § 1605.3, remove all employee contributions that exceeded 5% of basic pay for the pay period(s) involved, and refund to the participant the amount contributed. In addition, the employing agency must submit negative adjustment records to remove all employer contributions made to the participant's account during the period of misclassification that have been in the account for less than one year. The participant may choose whether or not he or she wishes to have the remainder of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant; and

(2) If the participant's account at any time contains no employer contributions that have been in the account for less than one year, the TSP recordkeeper will remove from the account any employer contributions that have been in the account for one year or more (and associated earnings), and will use such amounts to offset TSP administrative expenses.

(b) If a FERS participant is misclassified as a CSRS participant, when the misclassification is corrected he or she may not elect to have the contributions made while classified as CSRS removed from his or her account. The employing agency must make in a lump sum payment, pursuant to § 1605.2(b)(1), the appropriate agency automatic (1%) contributions and agency matching contributions on the employee contributions that were made while the participant was misclassified as CSRS. The participant may also elect to make, under § 1605.2(c), additional contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification. If such contributions are made, the employing agency must also submit any associated agency matching contributions and any lost earnings records required under 5 CFR part 1606.

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

(a) *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 will provide the participant with a decision on any claim within 30 days of receipt of the claim unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. Any decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial (including citations to any applicable statutes, regulations or procedures), a description of any additional material that would enable the participant to perfect his or her claim, and a statement of the steps to be taken 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 his or her claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial denial 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 filed appeal within 30 days of receipt of the appeal unless the employing agency provides the participant with good cause for taking 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 remedy 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.

(b) *Time limit for filing claims.* (1) Upon discovery of administrative errors, employing agencies are required to promptly correct those errors under this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the employing agency, the affected participant may file a claim for correction with his or her employing agency. The claim must be filed within one year of the earlier of:

(i) Receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(ii) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error. For purposes of this paragraph (b)(1)(ii) and paragraph (b)(1)(i) of this section, in the case of a participant who has been improperly classified as to retirement coverage, the receipt of a document indicating the participant's retirement code

classification is not, in and of itself, sufficient to notify the participant that his or her retirement classification is incorrect. However, receipt of a document indicating a change in retirement code classification, in addition to a written notice to the participant that the change may have implications for his or her TSP account, may be deemed by an employing agency to be sufficient to advise the participant that his or her retirement classification had been incorrect prior to the change. The one-year time limit will not commence with respect to retirement coverage misclassification errors unless and until the participant receives a written notice of the error that specifically mentions the TSP.

(2) If a participant fails to file a claim for correction of an administrative error in a timely manner (or fails to appeal a denial of a claim in a timely manner) under paragraph (b)(1) of this section, the agency may still correct any administrative error that is brought to or comes to its attention.

Subpart C—Board or TSP Recordkeeper Errors

§ 1605.7 Plan-paid lost earnings and other corrections.

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(2) of this section, if, because of an error committed by the Board or the TSP recordkeeper, a participant's account does not receive credit for earnings (which may be positive or negative) that it would have received had the error not occurred, the account will be credited with the difference between the earnings (if any) it actually received and the earnings it would have received had the error not occurred. The errors that warrant crediting of lost earnings under this paragraph (a) include, but are not limited to:

(i) Board or TSP recordkeeper delay in crediting contributions or other monies to a participant's account;

(ii) Improper issuance of a loan or withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong TSP investment fund(s) (e.g., improper processing or failure to process an interfund transfer request).

(2) A participant's TSP account will not be credited with earnings under paragraph (a)(1) of this section if, during the period the participant's account received credit for less earnings than it would have received but for the Board or recordkeeper error, the participant had the use of the money on which the earnings would have accrued.

(3) In the case of an error described in paragraph (a)(1)(iii) of this section, the affected participant will, upon discovery of the error, be given a choice whether or not to have the error corrected. If the participant chooses correction, the account will be placed in the position it would have attained had the error not occurred, including crediting of earnings (positive or negative as the case may be) that would have accrued had the error not occurred and reallocation of the account balance among the investment funds in the proportions that would have existed had the error not occurred.

(4) Where the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP recordkeeper error, earnings under paragraph (a)(1) of this section will be computed for the relevant period based upon the investment funds in which the affected monies would have been invested had the error not occurred. If the period for which lost earnings are paid is a period for which the participant did not, and should not, have had an account in the TSP, then the earnings will be computed using the G Fund rate of return for the relevant period.

(b) *Reversal of loan distributions.* If, because of Board or TSP recordkeeper error, a TSP loan is declared a taxable distribution under circumstances that make such declaration inconsistent with FERSA, 5 CFR part 1655, with the provisions of the documents (including instructions) signed by or provided to the participant in connection with the application for or issuance of the loan, or with other procedures established by the Board or TSP recordkeeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate or repay in full the outstanding balance on the loan.

(c) *Other corrections.* The Executive Director may, in his discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section or provide any other relief to a participant, including payment of lost earnings from the TSP, if the Executive Director determines that the correction or relief would serve the interests of justice, fairness, and equity among the participants of the TSP.

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

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

(b) *Processing claims.* (1) If the initial claim is submitted to the TSP recordkeeper, the TSP recordkeeper may either respond directly to the participant or the person making the claim on behalf of the participant, or may forward the letter to the Board for response. The decision whether the TSP recordkeeper should respond directly or forward the claim to the Board will be made in accordance with guidance and procedures established by the Board or, if no such specific guidance is available, in consultation with the Board's staff. If the TSP recordkeeper responds to a participant's claim, and all or any part of the participant's claim is denied, the participant may request review by the Board within 90 days of the date of the recordkeeper's response.

(2) If the Board denies all or any part of a participant's claim (whether upon review of a TSP recordkeeper denial or upon an initial review by the Board), the participant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the participant does not submit to the Board a request for review of a claim denial by the TSP Recordkeeper within the 90 days permitted under paragraph (b)(1) of this section, the participant shall not be deemed to have exhausted his or her administrative remedy.

(c) *Time limits for filing claims.* (1) Upon discovery of errors subject to correction under this subpart, the Board or TSP recordkeeper will promptly correct such errors in accordance with this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the Board or TSP recordkeeper, the affected participant must file a claim for correction within one year of the earlier of:

(i) His or her receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(ii) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error. For purposes of this paragraph (c)(1)(ii) and paragraph (c)(1)(i) of this section, in the case of a participant whose retirement coverage has been improperly classified, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that

his or her retirement code classification is incorrect.

(2) If a participant fails in a timely manner to file a claim for correction (or fails in a timely manner to request reconsideration of a claim) under paragraph (c)(1) of this section, the Board or TSP recordkeeper may still correct any administrative error that is brought to or comes to its attention.

Subpart D—Miscellaneous Provisions

§ 1605.9 Miscellaneous provisions.

(a)(1) If all employee contributions are removed from a participant's account under the rules set forth in this part, but earnings on any of those employee contributions or other residual amounts are left in the account, the earnings will remain in the account unless the participant was ineligible to have an account in the TSP at the time the earnings were credited to the account and remains ineligible. In that case, the earnings will be removed from the account and used to offset TSP administrative expenses. If earnings remain in the account under this paragraph (a), they will be subject to withdrawal from the participant's account upon separation from Federal employment under the same withdrawal rules as apply to any other money in a participant's account.

(2) If any residual earnings on employer contributions remain in a participant's account after all employer contributions have been removed from the account, those residual earnings will be removed from the account and used to offset TSP administrative expenses.

(b) If a participant fails to participate in the TSP due to circumstances beyond his or her control but not due to circumstances attributable to employing agency, Board, or TSP recordkeeper error, the participant will be entitled to elect to participate effective not later than the first pay period after the participant submits a contribution election form (Form TSP–1), regardless of whether the form is submitted during an election period. Such belated elections will be permitted on a prospective basis only; no makeup contributions will be permitted under this part.

(c) If TSP contributions are invested in the wrong investment fund(s) because of employing agency error, that error may be corrected only in accordance with 5 CFR 1606.7. Such errors may not be corrected under this part.

(d)(1) The address for the TSP recordkeeper is: National Finance Center, TSP Service Office, Post Office Box 61500, New Orleans, LA 70161–1500.

(2) The address for the Board is: Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Review of Draft Reports and Public Workshop on Clothes Washer Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Availability and Public Workshop.

SUMMARY: The Department of Energy (the Department or DOE) today gives notice that copies of the ''Draft Report on Design Options for Clothes Washers'' and ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers'' are available. In addition, the Department of Energy will hold a public workshop to discuss the above mentioned reports, comments received on the reports, the peer review of the reports, and other relevant topics pertaining to standards for clothes washers. All persons are hereby given notice of the opportunity to attend and participate in the public workshop.

DATES: The public workshop will be held on Friday, November 15, 1996, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: A copy of the reports entitled ''Draft Report on Design Options for Clothes Washers'' and ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers'' may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574. These documents may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The workshop will be held at the U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371

Mr. P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–8423

Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574.

SUPPLEMENTARY INFORMATION: The Department of Energy has initiated an extensive standards rulemaking process improvement effort which includes priority setting for various products. The Department has determined that the clothes washers standards rulemaking be assigned a ''High Priority'' based on potential energy savings being large. Therefore, the Department is initiating the first step of the new process, which is to consider design options for efficiency improvements, in developing clothes washer standards. The procedures of the new process can be found in the July 15, 1996, Federal Register notice (61 FR 36973) which outlines the planning and prioritization process, data collection and analysis, and decision making criteria.

The Department has recently drafted the following documents: ''Draft Report on Design Options for Clothes Washers'' and ''Draft Report on the Preliminary Engineering Analysis for Clothes Washers.'' The design options report identifies product classes and narrows the range of design options being considered in the development of standards. The Department is providing the preliminary engineering analysis primarily for information purposes, because the Department had previously received extensive data on manufacturer costs, energy and water use from the Association of Home Appliance Manufacturers, and was able to do a preliminary analysis based largely on this data. The engineering analysis, selection of candidate standard levels, and draft consumer/forecasting (energy and water) analyses will be completed before the Department publishes a Supplemental Advance Notice of