

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Parts 1604 and 1651

#### Uniformed Services Accounts and Death Benefits

**AGENCY:** Federal Retirement Thrift Investment Board

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

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) proposes to make several changes to its death benefits regulations. In particular, it proposes to expand the requirements necessary in order for a designation of beneficiary form to be valid. This change would also allow participants holding both a uniformed services and civilian account to submit a single designation of beneficiary form which can be used to designate beneficiaries for both accounts. The Agency also proposes to amend its death benefit regulations to allow participants to designate a custodian under the Uniform Transfers to Minors Act as a beneficiary, to permit the Agency to defer to State law when a potential beneficiary is implicated in the death of a participant and is subsequently found not guilty by reason of insanity, and to require a notary to witness disclaimers of death benefits.

**DATES:** Comments must be received on or before July 19, 2010.

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

**FOR FURTHER INFORMATION CONTACT:** Megan G. Grumbine at (202) 942-1644 or Laurissa Stokes at (202) 942-1645.

**SUPPLEMENTARY INFORMATION:** The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are

codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

#### Uniformed Services Accounts/Death Benefits—Agency's New Designation of Beneficiary Form and Related Requirements

The Agency proposes to amend its regulations to improve the process by which TSP participants designate beneficiaries for their TSP accounts.

In particular, the Agency, which has created a new optical character recognition (OCR) Form TSP-3, Designation of Beneficiary, proposes to expand its death benefits regulations to enumerate additional criteria the Agency requires in order for a designation of beneficiary form to be valid and accepted by the Agency. The Agency intends that this new form and its related requirements will guide participants through the important task of properly designating their account beneficiaries and greatly reduce potential ambiguities involved in the disposition of a participant's account upon his or her death.

Currently, the Agency's guiding statute and regulations provide that a designation of beneficiary form need only be signed, witnessed, and received by the Agency on or before the participant's date of death in order to be valid. See 5 U.S.C. 8424(d), 5 CFR 1651.3(c). However, the Agency often receives forms which meet these threshold requirements but omit critical details such as identifying information for the participant or the beneficiaries. In order to reduce the likelihood of error in processing the designation of beneficiary forms for its approximately 4.3 million participants, the Agency concluded it is necessary to expand the criteria required for a designation of beneficiary form to be valid.

Specifically, the Agency proposes to require that, in addition to being signed, properly witnessed, and received by the Agency on or before a participant's date of death, a designation of beneficiary form must also identify the participant in a manner so that the Agency can locate the participant's TSP account

(e.g., provide the participant's full name and the participant's date of birth, TSP account number, or Social Security number), identify primary and contingent beneficiaries in a manner so that the Agency can identify the individual (e.g., provide a beneficiary's Social Security number or date of birth), link each contingent beneficiary to a primary beneficiary, provide shares for primary beneficiaries which equal 100 percent, and contain no substantive alterations.

In addition to ensuring accurate processing and payment, the new regulatory requirements will reduce processing time and save the Agency resources as these requirements allow the Agency to quickly and accurately match the information on the designation of beneficiary form to the proper participant and beneficiaries. Further, by having these additional regulatory requirements in place, if a participant submits a form with an omission or error, the Agency is poised to quickly reject the form and alert the participant via a notification that he or she must submit a new, valid form. These up-front, early rejections and notifications will save the Agency considerable resources as the Agency will no longer be required to conduct as much posthumous research, analysis, and legal review.

Additionally, these new designation requirements (e.g., requiring that each page be free of substantive alterations) ensure that the Agency is not receiving fraudulent or changed forms. Because a deceased participant's TSP account is an important asset to a participant's beneficiaries, the Agency believes these new requirements are critical to ensuring that the participant's wishes are properly realized.

The Agency has attempted to balance its new requirements with customer service. The new OCR Form TSP-3, for example, provides detailed instructions and allows participants with both a uniformed services and civilian account to use one form to designate the same beneficiaries for both accounts.

Further, the Agency proposes to add only those requirements it views as critical. For example, the Agency would not reject an otherwise valid designation if the contingent beneficiary shares do not equal 100 percent. Since the Agency infrequently relies on contingent beneficiary information to pay an

account, and because the Agency has a mechanism by which it can determine the amount attributable to each beneficiary if the shares do not equal 100 percent, the Agency believes it is too onerous to invalidate a Form TSP-3 containing proper primary beneficiary designations solely due to the contingent beneficiary shares not equaling 100 percent.

All designation of beneficiary forms, including older versions of the Form TSP-3, submitted on or after the effective date of this regulation must meet these new regulatory requirements in order to be valid. This change is not retroactive and will not invalidate those forms which the Agency has received prior to the effective date of this regulation. The Agency's new designation of beneficiary form is available at <http://www.tsp.gov>.

#### **Death Benefits—Designating a Custodian Under the Uniform Transfers to Minors Act**

The Uniform Transfers to Minors Act (UTMA) is a uniform act drafted and recommended by the National Conference of Commissioners on Uniform State Laws and subsequently enacted by most U.S. states and the District of Columbia. It allows an individual to make a financial transfer to a minor, but also to prevent the minor from having immediate access to the transferred property or funds. The person designated as custodian must manage the property or funds for the minor's benefit until the minor reaches the age of majority as determined by the governing state's law.

The Agency's proposed regulation would allow a participant to designate a custodian under UTMA as the beneficiary of his or her TSP account. To achieve consistent administration, the TSP will require the UTMA custodianship to be established under the laws of the District of Columbia.

Under the laws of District of Columbia, when the minor reaches 18 years of age or dies, a UTMA custodianship will automatically terminate, and the custodial relationship will cease to exist. Accordingly, if the minor reaches 18 years of age before the death benefit becomes payable, payment will be made directly to the minor and not to the designated custodian. An UTMA designation would only be valid if it is designated using the Agency's designation of beneficiary form. The Agency has created a sample UTMA designation which is available at <http://www.tsp.gov>.

#### **Death Benefits—Homicide**

Section 1651.12 of Title 5 of the Code of Federal Regulations governs the distribution of death benefits when a potential beneficiary causes the death of a participant. It currently provides that if a beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death that would preclude the beneficiary from inheriting under State law, the beneficiary will not be entitled to receive any portion of the participant's account. It further provides that the Agency will follow the State law of the participant's domicile as that law is set forth in a civil court judgment.

As section 1651.12 currently reads, a potential beneficiary may be deprived of his or her entitlement to death benefits only if (1) he or she is convicted of a crime that would bar him or her from inheriting under the laws of the State in which the participant is domiciled at the time of death or (2) he or she is judged guilty in civil court of a crime that would bar him or her from inheriting under the laws of the state in which the participant is domiciled. The language of section 1651.12 is imperfect as applied to a criminal verdict declaring that the potential beneficiary is not guilty, by reason of insanity, of causing the participant's death. This proposed regulation would allow the Agency to defer to state law to determine the effect of a verdict of not guilty by reason of insanity on the potential beneficiary's entitlement to inherit from the deceased participant, notwithstanding that a verdict of not guilty by reason of insanity does not constitute a conviction.

#### **Death Benefits—Notarized Signature for Disclaimers**

The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. A valid disclaimer is irrevocable and the effect of a disclaimer is that the disclaimed share will be paid as though the beneficiary predeceased the participant.

The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be: (1) Submitted in writing; (2) signed by the person (or legal representative) disclaiming the benefit; and (3) received before the TSP pays the death benefit. This proposed regulation would require the signature of the person (or legal representative) disclaiming the benefit to be witnessed by a notary. Because the effect of a disclaimer is to preclude an otherwise lawful beneficiary from taking either a

portion or the whole amount of a TSP account, this added requirement is necessary to ensure that the Agency is receiving non-fraudulent disclaimers.

#### **Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

#### **Paperwork Reduction Act**

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

#### **Unfunded Mandates Reform Act of 1995**

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501 1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

#### **List of Subjects**

##### *5 CFR Part 1604*

Military personnel, Pensions, Retirement.

##### *5 CFR Part 1651*

Claims, Government employees, Pensions, Retirement.

##### **Gregory T. Long,**

*Executive Director, Federal Retirement Thrift Investment Board.*

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

#### **PART 1604—UNIFORMED SERVICES ACCOUNTS**

1. The authority citation for part 1604 continues to read as follows:

**Authority:** 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

##### **§ 1604.8 [Amended]**

2. Amend § 1604.8, by removing the second sentence of paragraph (a).

#### **PART 1651—DEATH BENEFITS**

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

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

4. Amend § 1651.3, by adding a fourth sentence to paragraph (b), and revising paragraph (c) to read as follows:

**§ 1651.3 Designation of beneficiary.**

\* \* \* \* \*

(b) \* \* \* A participant may designate a custodian under the Uniform Transfers to Minors Act provided that the custodianship is established under the laws of the District of Columbia and that the participant designates the custodianship using the Agency's designation of beneficiary form.

(c) *Validity requirements.* To be valid and accepted by the TSP record keeper, a TSP designation of beneficiary form must:

(1) Be received by the TSP record keeper on or before the date of the participant's death;

(2) Identify the participant in such a manner so that the Agency can locate his or her TSP account;

(3) Be signed and properly dated by the participant and signed and properly dated by two witnesses;

(i) The participant must either sign the form in the presence of the witnesses or acknowledge his or her signature on the form to the witnesses;

(ii) All submitted and attached pages must be signed by the participant, dated by the participant, and witnessed in the same manner (by the same witnesses) as the form itself and must follow the format of the TSP designation of beneficiary form;

(iii) A witness must be age 21 or older; and

(iv) A witness designated as a beneficiary will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata.

(4) Designate primary beneficiary shares which when summed equal 100%;

(5) Contain no substantive alterations (e.g., struck-through shares or scratched-out names of beneficiaries);

(6) Designate each primary and each contingent beneficiary in such a manner so that the Agency can identify the individual or entity; and

(7) Match each contingent beneficiary to a primary beneficiary.

\* \* \* \* \*

5. Amend § 1651.12, by revising the second sentence to read as follows:

**§ 1651.12 Homicide.**

\* \* \* If the beneficiary is implicated in the death of the participant and the beneficiary would be precluded from inheriting under State law, the beneficiary will not be entitled to receive any portion of the participant's account. \* \* \*

6. Amend § 1651.17, by revising paragraph (b)(2) to read as follows:

**§ 1651.17 Disclaimer of benefits.**

\* \* \* \* \*

(b) \* \* \*

(2) Signed or acknowledged, in the presence of a notary, by the person (or legal representative) disclaiming the benefit; and

\* \* \* \* \*

[FR Doc. 2010-14741 Filed 6-17-10; 8:45 am]

BILLING CODE 6760-01-P

**DEPARTMENT OF ENERGY****10 CFR Part 430**

[Docket No. EERE-2010-BT-STD-0005]

RIN 1904-AC15

**Energy Conservation Program for Consumer Products: Energy Conservation Standards for Certain Small Diameter, Elliptical Reflector, and Bulged Reflector Incandescent Reflector Lamps**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule; notice of extension of public comment period.

**SUMMARY:** On May 3, 2010 U.S. Department of Energy (DOE) published a document in the **Federal Register** initiating a rulemaking to evaluate energy conservation standards for certain small diameter, elliptical reflector (ER), and bulged reflector (BR) incandescent reflector lamps. In that document, DOE announced the availability of a framework document and the date of a public meeting. This document announces an extension of the public comment period for submitting comments on the framework document or any other aspect of the rulemaking for certain small diameter, ER, and BR incandescent reflector lamps. The comment period is extended to July 9, 2010.

**DATES:** DOE will accept comments, data, and information regarding the framework document received no later than July 9, 2010.

**ADDRESSES:** Any comments submitted must identify the framework document for energy conservation standards for certain small diameter, ER, and BR incandescent reflector lamps, and provide docket number EERE-2010-BT-STD-0005 and/or RIN number 1904-AC15. Comments may be submitted using any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail:* [IRL-2010-STD-0005@ee.doe.gov](mailto:IRL-2010-STD-0005@ee.doe.gov). Include docket number EERE-2010-BT-STD-0005 and/or RIN: 1904-AC15 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. *Telephone:* (202) 586-2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586-2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Perkins, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. *Telephone:* (202) 287-1846. *E-mail:* [Anthony.Perkins@hq.doe.gov](mailto:Anthony.Perkins@hq.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. *Telephone:* (202) 586-9507. *E-mail:* [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On May 3, 2010, DOE published a document in the **Federal Register** announcing a public meeting and the availability of a framework document as a first step in the rulemaking process to consider energy conservation standards for certain ER, BR, and small diameter incandescent reflector lamps. 75 FR 23191. The document provided for the submission of written comments by June 17, 2010 and oral comments were also accepted at a public meeting held on May 26, 2010. Stakeholders have requested an extension of the comment