Proposed Rules

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR 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

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

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
inheriting 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) disclosing 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. 8440(e), 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;
(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.
* * * * *
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
* * * * *
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DEPARTMENT OF ENERGY

10 CFR Part 430

RIN 1904–AC15


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. 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.
• 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.


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 period to July 9, 2010.