FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Death Benefits

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations governing death benefit payments from the Thrift Savings Plan (TSP). These regulations set forth the Board's policies and procedures for processing death benefit claims and death benefit payments under 5 U.S.C. 8433(e) and 8424(d).

DATES: This final rule is effective June 13, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara (202) 942-1660.

SUPPLEMENTARY INFORMATION: The Board administers the TSP which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for that participant. 5 U.S.C. 8437(g).

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP participant dies before he or she has completed a withdrawal election, the account is to be disbursed in accordance with the order of precedence set forth at section 8424(d).

These regulations set forth the Board's policies and procedures for processing death benefit claims and death benefit payments under 5 U.S.C. 8433(e) and 8424(d).

These regulations were published in proposed form on March 27, 1997 (62 FR 14653). No comments were received.

Section by Section Analysis

Section 1651.1 contains definitions of terms throughout these regulations. A participant's domicile is important for a determination of beneficiary under § 1651.5 and § 1651.9. Normally, the Board would look to the participant's address at the time of death to identify the participant's domicile; however, this practice presents problems in the case of participants who are living overseas. In order to permit the Board to look to the law of the United States in all cases, the Board will use the state in which the participant is liable for state income taxes. This information should be generally available from the participant's agency.

Section 1651.2(a) sets forth the order of precedence as found in 5 U.S.C. 8424(d). Under the statutory order of precedence, payment is made first to the beneficiary or beneficiaries designated by the participant on a properly completed and filed designation of beneficiary form. Form TSP–3, Designation of Beneficiary, has been developed by the Board for that purpose. If the participant has elected to withdraw his or her account in the form of certain types of annuities (discussed below), the designation of beneficiary or beneficiaries made on Form TSP–11-B, Beneficiary Designation for a TSP Annuity, will supersede the statutory order of precedence. If the participant does not designate a beneficiary, payment will be made as provided by the remainder of 5 U.S.C. 8424(d). Each statutory category of potential beneficiaries is addressed in a separate section of these regulations.

Section 1651.2(b) addresses the payment of a death benefit after the participant has completed a withdrawal election. Different rules apply depending on the type of withdrawal election and, if applicable, the type of annuity chosen. Paragraph (b)(1) addresses the situation in which the participant dies after having completed an election to withdraw his or her account in the form of a single payment or monthly payments but before payment has been made. The account will be paid in accordance with the statutory order of precedence, because the election made by the participant provides no indication of his or her intended beneficiaries.

Paragraphs (b)(2) through (b)(6) address situations in which the participant dies after having completed an election to withdraw his or her account in the form of certain types of annuities but before the annuity has been purchased. Under paragraph (b)(2), if the participant dies after having completed an election to withdraw his or her account in the form of a joint life annuity but before the annuity has been purchased, the account will be paid as a single payment to the joint life annuitant. In this situation, the participant's election makes it clear that the joint annuitant should be the beneficiary upon the participant's death.

Under paragraph (b)(3), if both the participant and the joint annuitant die after the participant has completed an election to withdraw his or her account in the form of a joint life annuity but before the annuity has been purchased, and the annuity election included a cash refund, the account will be paid proportionally to the beneficiary or beneficiaries designated on Form TSP–11–B, Beneficiary Designation for a TSP Annuity. This result gives effect to the participant's wishes as reflected by his or her annuity election. If the annuity election did not include a cash refund, under paragraph (b)(4), the account will be paid in accordance with the statutory order of precedence.

Similarly, under paragraph (b)(5), if a participant dies after having completed an election to withdraw his or her account in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but before the annuity has been purchased, the account will be paid proportionally to the beneficiary or beneficiaries designated on Form TSP–11–B. If the annuity does not include either a cash refund or 10-year certain feature, under paragraph (b)(6), the account will be paid in accordance with the statutory order of precedence.

Paragraph (b)(7) addresses the situation in which the participant dies after the annuity has been purchased. In that situation, the account will be paid in accordance with the annuity method selected. Once the Board purchases the annuity elected by the participant, responsibility for payment of the benefits shifts to the annuity provider.

Section 1651.3 sets forth the requirements for a valid designation of beneficiary on a Form TSP–3. In order to designate a beneficiary of a TSP account, a participant must complete and send to the TSP record keeper a Form TSP–3, Designation of Beneficiary, or Form TSP–11–B, Beneficiary Designation for a TSP Annuity. Form TSP–11–B must be used to designate a beneficiary when a participant elects to withdraw his or her account in the form of a joint annuity with a cash refund feature or a single life annuity with a cash refund feature or a 10 year certain feature.

A will may not be used to designate a beneficiary of a TSP account. The Board will also not honor a designation of beneficiary that is set forth in a court decree of divorce, annulment, or legal separation or in any court order or court-approved property settlement agreement incident to such a decree that is issued under section 8435(c)(2) of title 5 of the United States Code. Such designation is considered to be an award of a future interest and, to the extent that a court order awards an amount to be paid upon the occurrence of a future specified event, the order is not a qualifying retirement benefits court order pursuant to 5 CFR 1653.2(c).

All Forms TSP–3 signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. This is a change in the procedures for processing Forms TSP–3. Before January 1, 1995, active employees were required to submit Forms TSP–3 to their employing agency, which, in turn, forwarded the forms to the TSP record keeper when a participant died in service or separated from service. Because of the change in the processing of Forms TSP–3, the Board has instructed all agencies to send to the TSP record keeper all Forms TSP–3 that are in employees' personnel files. Any forms signed before January 1, 1995, which were received by the agencies before the participant's death will be evaluated by the record keeper to determine whether they are valid, despite the fact that they were received by the agencies. Forms that the record keeper finds invalid will be returned to the participant. A valid Form TSP–3 will remain in effect until it is canceled or changed as described in § 1651.4.

In addition to being properly filed, a Form TSP–3 must be properly completed in order to be valid. This means that the form must be signed by the participant and two witnesses. The individuals signing as witnesses must actually observe the participant signing the form, or they must observe the participant acknowledge his or her signature on the Form TSP–3. Witnesses should not be named as beneficiaries. A form that contains a signature for a witness who is also a named beneficiary is valid; however, the witness beneficiary will not be entitled to receive his or her designated share of the account.

Section 1651.4 sets forth the requirements for changing or canceling a designation of beneficiary. In order to change a designation, the participant must complete and file another Form TSP–3. The Form TSP–3 containing the changes must be valid and must be received by the TSP record keeper on or before the date of death of the participant. In order to cancel a prior designation, the participant may complete and send another Form TSP–3 with a notation that all prior designations are canceled. Alternatively, the participant may send a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP–3, stating that prior designations are canceled. A letter canceling a prior designation must also be received by the TSP record keeper on or before the participant's date of death.

A participant may make, change, or cancel a designation of beneficiary at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries. An intervening legal separation, divorce, or annulment of the marriage of the participant does not automatically cancel a Form TSP–3 naming the spouse or former spouse or anyone else as a beneficiary.

Sections 1651.5 through 1651.9 further describe the potential beneficiaries under the statutory order of precedence. Section 1651.5 sets forth the rules for payment to the participant's spouse. It explains that the widow or widower of the participant is the person to whom the participant is married on the date of death. Whether the participant was married will be determined in accordance with applicable state laws, based upon the participant's domicile at the time of death. A person is considered to be married even if the parties are separated. The Board will make a payment to an individual who claims to be the common law spouse of a participant only if the requirements for a common law marriage under the applicable state law have been met.

Section 1651.6 sets forth the rules for the death benefit payment of a participant's TSP account to the participant's children or the descendants of deceased children. A child includes a natural or adopted child. Whether a child is the natural child of the participant will be determined in accordance with applicable state law. State law will not apply, however, in cases involving a natural child of a TSP participant who was adopted by someone other than the spouse of the participant during the lifetime of the participant. In those cases, these regulations establish the general rule that the child will not be treated as a child of the participant under this section.

Section 1651.7 sets forth the rules for the death benefit payment of a participant's TSP account to the participant's parents. A step-parent is not considered a parent unless the step-parent adopted the participant.

Payment to the duly appointed executor or administrator of the participant's estate is addressed in § 1651.8. A duly appointed executor or administrator of a participant's estate includes any person appointed by a court to act in that capacity. Some states have established statutory procedures for transferring the assets of estates below a specified value. The Board will accept a person authorized under those procedures to handle the affairs of the deceased participant's estate as the ''duly appointed executor or administrator'' of the participant's estate. This policy recognizes that many states do not require, and may not even permit, estates below a certain value to be probated formally through the state court system. However, documentation establishing that the applicant is qualified under the relevant state's small estate procedures must be submitted to the TSP record keeper.

If the participant is not survived by a spouse, child, or parent, and an executor or administrator is not appointed under state court or statutory procedures, § 1651.9 provides that payment will be made to the participant's next of kin as determined under the state law of the participant's domicile at the time of death.

Under 5 U.S.C. 8424(d), benefits will be paid to the individual or individuals ''surviving the employee or Member and alive at the date title to the payment arises.'' The Board interprets this phrase to mean that the entitlement to a death benefit payment arises at the time of the participant's death and, therefore, a beneficiary must be alive at the time of the participant's death in order to receive a death benefit. Accordingly, under § 1651.10(a), if a beneficiary designated on a Form TSP–3 or Form TSP–11–B dies before the participant, the beneficiary's share will be paid to the other living designated beneficiary(ies), if any, proportionally. For example, if the deceased beneficiary was designated to receive 50% of the account and the first living beneficiary was to receive 20% of the account and the second remaining beneficiary was to receive 30% of the account, the first living beneficiary would receive 40% of the deceased beneficiary's share of the account (20% + (20/50 × 50%)) and the second remaining beneficiary would receive 60% of the deceased beneficiary's share of the account (30% + (30/50 × 50%)). If there are no living designated beneficiaries, the account will be paid to the person(s) determined to be the beneficiary(ies) under the statutory order of precedence.

Under § 1651.10(b), if a trust or other entity that has been designated as the beneficiary of the participant's account does not exist on the date of death of the participant or if it is not created by will or other document to take effect upon the participant's death, the account will be paid under the statutory order of precedence.

Under § 1651.10(c), if a beneficiary by virtue of the order of precedence dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary, unless the deceased beneficiary is a child of the beneficiary. In that case, the descendants of the deceased child would receive the deceased child's share of the account. If there are no other beneficiaries bearing the same relationship or there are no descendants of a deceased child, the deceased beneficiary's share will be paid to the person(s) next in line, according to the order of precedence.

Because a beneficiary's interest in the death benefit is created upon the death of the participant, § 1651.10(d) provides that if the beneficiary dies after the participant but before payment is made, the beneficiary's share will be paid to the beneficiary's estate.

Consistent with the requirement that the beneficiary survive the participant, § 1651.11 provides that if the participant and the beneficiary die simultaneously, the Board considers the beneficiary to have predeceased the participant and the account will be paid in the manner set forth in § 1651.10. Death is considered to be simultaneous if the death certificate lists the same hour and minute for the time of death. In common disaster situations, such as an automobile or airplane crash, where a precise time of death cannot be established, it will be presumed that the beneficiary(ies) and the participant died simultaneously, unless the death certificate otherwise indicates.

Section 1651.12 reflects the Board's policy of not paying the beneficiary of a TSP participant if the beneficiary is convicted of a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law. In this regard, the Board follows strong public policy which prohibits a person from profiting from his or her wrongdoing. The Board will follow the law of the state in which the participant was domiciled at the time of death as that law is set forth in a civil court judgment or, in the absence of such a judgment, will apply state law to the facts of the case after all criminal appeals have been exhausted. The civil court judgment must be one that, under the law of the state, would protect the Board from double liability or payment. The Board will treat that beneficiary as if he or she had predeceased the TSP participant and will determine the beneficiary(ies) of the account according to the procedures described in § 1651.10. A plea of guilty to such a crime constitutes a conviction for purposes of these regulations.

Section 1651.13 sets forth the procedure for applying for a death benefit payment. In order for a death benefit payment to be processed, the TSP record keeper must receive Form TSP–17, Application for Account Balance of Deceased Participant, with a certified copy of the participant's death certificate. A copy of a certified death certificate contains a copy of the stamp or seal of the state agency that is responsible for issuing death certificates. Form TSP–17 may be submitted by any potential beneficiary or any interested party; however, submission of an application does not entitle the applicant to benefits.

Section 1651.14 explains how death benefit payments are made. Before a payment can be made, each beneficiary will be sent a notice of pending payment. That notice will contain information regarding the portion of the account that will be paid to the beneficiary and will provide information regarding the Federal tax consequences of the payment. Payment is made by separate check to each beneficiary. If payment is to the widow or widower of the participant, she or he may transfer all or a portion of the payment to an Individual Retirement Arrangement (IRA). The TSP record keeper will provide the widow or widower with a Form TSP–13–S, Spouse Election to Transfer to IRA or Other Eligible Retirement Plan, to request such a transfer. For purposes of transferring the account, the TSP record keeper will not accept forms from other institutions. If payment is to a minor child, the check will be made payable directly to the child. If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant. A taxpayer identification number (TIN) must be provided for any estate, regardless of whether the estate is required to pay taxes. This is necessary to allow the Board to fulfill its statutory reporting obligation to the Internal Revenue Service. If payment is to a trust, the check will be made payable to the trustee. A taxpayer identification number (TIN) must be provided for the trust.

Certain types of issues relating to the processing of death cases will be decided by the Board as set forth in § 1651.15. Those cases may involve conflicting claims to a participant's account, such as when one applicant claims that the participant was married at the time of death and another applicant claims that the participant was not married at the time of death. Other cases may involve the accuracy of the Form TSP–17 or the validity of Forms TSP–3, TSP–17, TSP–11–B, or a letter canceling a designation. The Board will also review challenges made to the legal status of a purported beneficiary. The Board may require that issues regarding paternity, the validity of a participant's marriage on the date of death, or other matters that traditionally fall under state law, be resolved by a state court before the Board issues payment.

In some cases, the beneficiary of the account cannot be readily located, such as when the Board does not have a correct address for an estranged spouse or parent. These cases include both situations in which the name of the beneficiary is known, but his or her whereabouts are not, and situations in which the name of the beneficiary is not known. Section 1651.16 sets forth the process that will be followed when it appears that a beneficiary is missing.

The TSP record keeper will make reasonable efforts to locate the missing beneficiary or to learn the name and location of a missing beneficiary. If the beneficiary has not been located and at least one year has passed since the date of death of the participant, that beneficiary will be treated as having predeceased the participant. However, if a potential beneficiary does not cooperate in the TSP record keeper's efforts to locate a missing beneficiary(ies), the missing beneficiary's share of the account will be treated as having been abandoned and it will revert to the TSP. In such circumstances, the missing beneficiary(ies) may reclaim the abandoned share of the account at a later date by submitting a Form TSP–17 and providing sufficient proof to establish his or her relationship to the participant. However, earnings will not be credited to any funds that have been abandoned.

If the total number of beneficiaries and their identities are known and one or more, but not all, appear to be missing, payment of part of the participant's account may be made to the beneficiary(ies) whose location is known. If the Board is unable to locate any beneficiaries of the account, the account will be abandoned and the funds will be forfeited to the TSP. If a beneficiary is located at any time after the funds are forfeited to the TSP, the beneficiary may claim the entire account by submitting a Form TSP–17 and providing sufficient proof to establish his or her identity and relationship to the participant. However, earnings will not be credited to any funds that have been abandoned.

The beneficiary of a TSP account may disclaim his or her right to receive the benefit in accordance with § 1651.17. A disclaimer is irrevocable. The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid. The disclaimant must disclaim the entire benefit, not a portion. The disclaimant will be treated as having predeceased the participant for purposes of determining to whom the disclaimant's portion of the account is to be paid.

Section 1651.18 provides that payment to a beneficiary made in accordance with these regulations bars any claim by another person.

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.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administration Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, title 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 United States before the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 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, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Federal Retirement Thrift Investment Board amends Chapter VI of title 5 of the Code of Federal Regulations by adding a new Part 1651 to read as follows:

PART 1651—DEATH BENEFITS

Sec.

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

§ 1651.1 Definitions.

Terms used in this part shall have the following meanings:

Beneficiary means the person or legal entity who is entitled to receive a death benefit from a deceased participant's TSP account;

Board means the Federal Retirement Thrift Investment Board;

Death benefit means all or a share of the deceased participant's TSP account at the time of payment;

Domicile means the participant's place of residence for purposes of state income tax liability;

Order of precedence means the order in which a death benefit will be paid, as specified in 5 U.S.C. 8424(d);

Participant means any person with an account in the Thrift Savings Fund;

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *TSP* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*;

TSP record keeper means the entity that is engaged by the Board to perform record keeping service for the Thrift Savings Plan. As of June 13, 1997, the TSP record keeper is the National Finance Center, United States Department of Agriculture, whose mailing address is National Finance Center, TSP Service Office, P.O. Box 61135, New Orleans, Louisiana 70161–1135;

Withdrawal election means a request for the payment of a participant's vested account balance filed under 5 CFR 1650, subpart B.

§ 1651.2 Entitlement to benefits.

(a) *Death benefit payments made before the participant has completed a withdrawal election.* If a participant dies before completing a withdrawal election, the account will be paid to the individual or individuals surviving the participant in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on a properly completed and filed Form TSP–3, Designation of Beneficiary, in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the widow or widower of the participant in accordance with § 1651.5;

(3) If none of the above in paragraphs (a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If none of the above in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant or the surviving one of them in accordance with § 1651.7;

(5) If none of the above in paragraphs (a)(1) through(a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8;

(6) If none of the above in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who are entitled under the laws of the state of the participant's domicile at the date of the participant's death in accordance with § 1651.9.

(b) *Death benefit payments made after the participant has completed a withdrawal election.* (1) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single payment or monthly payments (whether or not the participant has requested that all or part of such payments be transferred to an eligible retirement plan), but the account balance has not yet been paid out in accordance with such election.

(2) The death benefit will be paid as a single payment to the joint life annuitant if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a joint life annuity, but the annuity has not yet been purchased.

(3) The death benefit will be paid pro rata as a single payment to the beneficiary(ies) designated on Form TSP–11–B, Beneficiary Designation for a TSP Annuity, if both the participant and the joint annuitant die after the par ticipant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that includes a cash refund, but before the annuity has been purchased.

(4) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section, if the Board learns that—

(i) Both the participant and the joint annuitant have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that does not include a cash refund, but the annuity has not yet been purchased; or

(ii) Both the beneficiary(ies) named under a cash refund election and the joint annuitant have died after the participant has completed an election to withdraw, but the annuity has not yet been purchased.

(5) The death benefit will be paid *pro rata* to the beneficiary(ies) designated on the Form TSP–11–B if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but the annuity has not yet been purchased.

(6) The death benefit will be paid in accordance with the order of precedence set forth in paragraph (a) of this section if the Board learns that the participant and all beneficiaries designated on a Form TSP–11–B have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or a 10-year certain feature, but the annuity has not yet been purchased.

(7) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if a participant dies after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that does not include either a cash refund or 10-year certain feature, but before the annuity has been purchased.

(8) If a participant dies after the annuity purchase has been completed, benefit payments will be provided in accordance with the annuity method selected.

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* In order to designate a beneficiary of a TSP account, the participant must complete and file Form TSP–3, Designation of Beneficiary, unless Form TSP–11–B is used for this purpose. All Forms TSP–3 and TSP–11–B signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. If the Form TSP–3 was received and accepted by the participant's employing agency before January 1, 1995, the TSP record keeper will process it and determine its validity when it is received from the employing agency. A valid Form TSP–3 remains in effect until it is properly canceled or changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, cor poration, or legal entity, including the U.S. Government, may be designated as a beneficiary. Any number of beneficiaries can be named to share the death benefit. A beneficiary may be designated without the knowledge or consent of the beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* In order to be valid, a Form TSP–3 must be signed by the participant in the presence of two witnesses, or the participant must acknowledge his or her signature on the Form TSP–3 in the presence of two wit nesses. A witness must be age 21 or older, and a witness designated as a beneficiary on the Form TSP–3 will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the Form TSP–3 is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries *pro rata.*

(d) *Will.* A will, or any document other than Form

TSP–3 or Form TSP–11–B, may not be used to designate a beneficiary(ies) of a TSP account.

§ 1651.4 Change or cancellation of a designation of beneficiary.

(a) *Change.* In order to change a designation of beneficiary, the participant must properly complete a new Form TSP–3, which must be received by the TSP record keeper on or before the date of death of the participant under the same rules as set forth in § 1651.3(a). The TSP record keeper will honor the Form TSP–3 with the latest date signed by the participant which is otherwise valid under the rules set forth in § 1651.3. A change of beneficiary may be made at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid Form TSP–3 or a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP–3, stating that all prior designations are can celed. In order to be effective, either of these documents must be received by the TSP record keeper on or before the date of death of the participant in accordance with the rules set forth in § 1651.3(a). The filing of either of these documents will cancel all earlier designations.

(c) *Will.* A will, or any document other than Form TSP–3 or Form TSP–11–B, may not be used to change or cancel a beneficiary(ies) of a TSP account.

§ 1651.5 Widow or widower.

For purposes of payment under § 1651.2(a)(2), the widow or widower of the participant is the person to whom the participant is married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

§ 1651.6 Child or children.

If the account is to be paid to the child or children, or to descendants of deceased children by representation, as provided in § 1651.2(a)(3), the following rules apply:

(a) *Child.* A child includes a natural or adopted child of the deceased participant.

(b) *Descendants of deceased children.* ''By representation'' means that, if a child of the participant dies before the participant, all descendants of the deceased child at the same level will equally divide the deceased child's share of the participant's account.

(c) *Adoption by another.* A natural child of a TSP participant who has been adopted by someone other than the participant during the participant's lifetime will not be considered the child of the participant, unless the adopting parent is the spouse of the TSP participant.

§ 1651.7 Parent or parents.

If the account is to be paid to the participant's parent or parents under § 1651.2(a)(4), the following rules apply:

(a) *Amount.* If both parents are alive at the time of the participant's death, each parent will be separately paid fifty percent of the account. If only one parent is alive at the time of the participant's death, he or she will receive the entire account balance.

(b) *Step-parent.* A step-parent is not considered a parent unless the step-parent adopted the participant.

§ 1651.8 Participant's estate.

If the account is to be paid to the duly appointed executor or administrator of the participant's estate under § 1651.2(a)(5), the following rules apply:

(a) *Appointment by court.* The executor or administrator must provide documentation of court appointment.

(b) *Appointment by operation of law.* If state law provides procedures for handling small estates, the Board will accept the person authorized to dispose of the assets of the deceased participant under those procedures as a duly appointed executor or administrator. Documentation which demonstrates that the person is properly authorized under state law must be submitted to the TSP record keeper.

§ 1651.9 Participant's next of kin.

If the account is to be paid to the participant's next of kin under § 1651.2(a)(6), the next of kin of the participant will be determined in accordance with the state law of the participant's domicile at the time of death.

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any beneficiary designated on a Form TSP–3 or Form TSP–11-B who predeceases the participant will be paid *pro rata* to other designated beneficiary(ies). If there are no designated beneficiaries who survive the participant, the account will be paid to the person(s) determined to be the beneficiary(ies) under the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a trust or other entity that has been designated as a beneficiary does not exist on the date of death of the participant, or if it is not created by will or other document that is effective upon the participant's death, the amount will be paid in accordance with the rules of paragraph (a) of this section, as if the trust were a beneficiary that predeceased the participant.

(c) *Non-designated beneficiary dies before participant.* If a beneficiary other than a beneficiary designated on a Form TSP–3 or a Form TSP–11–B (*i.e.*, a beneficiary by virtue of the order of precedence) dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary. However, if the deceased beneficiary is a child of the participant, payment will be made to the deceased child's descendants, if any. If there are no other beneficiaries bearing the same relationship or, in the case of children, there are no descendants of deceased children, the deceased beneficiary's share will be paid to the person(s) next in line according to the order of precedence.

(d) *Beneficiary dies after participant but before payment.* If a beneficiary dies after the participant, the beneficiary's share will be paid to the beneficiary's estate.

(e) *Death certificate.* A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died.

§ 1651.11 Simultaneous death.

If a beneficiary dies at the same time as the participant, the beneficiary will be treated as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10. The same time is considered to be the same hour and minute as indicated on a death certificate. If the participant and beneficiary are killed in the same event, death is presumed to be simultaneous, unless evidence is presented to the contrary.

§ 1651.12 Homicide.

If the participant's death is the result of a homicide, a beneficiary will not be paid as long as the beneficiary is under investigation by local, state or Federal law enforcement authorities as a suspect. If the beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. The Board will follow the state law of the participant's domicile as that law is set forth in a civil court judgment (that, under the law of the state, would protect the Board from double liability or payment) or, in the absence of such a judgment, will apply state law to the facts after all criminal appeals are exhausted. The Board will treat the beneficiary as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10.

§ 1651.13 How to apply for a death benefit.

In order for a deceased participant's account to be disbursed, the TSP record keeper must receive Form TSP–17, Application for Account Balance of Deceased Participant. Any potential beneficiary or other individual can file Form TSP–17 with the TSP record keeper. The individual submitting Form TSP–17 must attach a copy of a certified death certificate of the participant to the application. The acceptance of an application by the TSP record keeper does not entitle the applicant to benefits.

§ 1651.14 How payment is made.

(a) *Notice.* The TSP record keeper will send notice of pending payment to each beneficiary.

(b) *Payment.* Payment is made separately to each entitled beneficiary. It will be sent to the address that is provided on Form TSP–3, unless a more recent address is provided on Form TSP–17, or is otherwise provided to the TSP record keeper in writing by the beneficiary. All beneficiaries must provide the TSP record keeper with a taxpayer identification number; *i.e.*, Social Security number (SSN), employee identification number (EIN), or individual taxpayer identification number (ITIN), as appropriate.

(c) *Payment to widow or widower.* The widow or widower of the participant may request that the TSP transfer all or a portion of the payment to an Individual Retirement Arrangement (IRA). In order to request such a transfer, a spouse must file with the TSP record keeper Form TSP–13–S, Spouse Election to Transfer to IRA and Other Eligible Retirement Plan.

(d) *Payment to minor child or incompetent beneficiary.* Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documen tation showing his or her appointment as guardian.

(e) *Payment to executor or administrator.* If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A TIN must be provided for all estates.

(f) *Payment to trust.* If payment is to a trust, the check will be made payable to the trustee. A TIN must be provided for the trust.

§ 1651.15 Claims referred to the Board.

(a) *Contested claims.* Any challenge to a proposed death benefit payment must be filed in writing with the TSP record keeper before payment. All contested claims will be referred to the Board. The Board may also consider issues on its own.

(b) *Payment deferred.* No payment will be made until the Board has resolved the claim.

§ 1651.16 Missing and unknown beneficiaries.

(a) *Locate and identify beneficiaries.* (1) The TSP record keeper will attempt to identify and locate all potential beneficiaries.

(2) If a beneficiary is not identified and located, and at least one year has passed since the date of the participant's death, the beneficiary will be treated as having predeceased the participant and the beneficiary's share will be paid in accordance with § 1651.10

(b) *Payment to known beneficiaries.* If all potential beneficiaries are known but one or more beneficiaries (and not all) appear to be missing, payment of part of the participant's account may be made to the known beneficiaries. The lost or unidentified beneficiary's share may be paid in accordance with paragraph (a) of this section at a later date.

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the Board's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the fund is abandoned. The beneficiary will be required to submit Form TSP–17 and may be required to submit proof of his or her identity and relationship to the participant.

§ 1651.17 Disclaimer of benefits.

(a) *Disclaimer criteria.* The beneficiary of a TSP account may disclaim his or her right to receive the account. In order to be effective, the following criteria must be met:

(1) The disclaimer must be in writing. The writing must state specifically that the beneficiary is disclaiming his or her right to receive a death benefit payment from the TSP account of the participant.

(2) The disclaimer must be irrevocable.

(3) The disclaimer must be received by the TSP record keeper before payment is made.

(4) The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid.

(5) The disclaimant must disclaim the entire benefit, not a portion.

(b) *Treatment of disclaimed share.* The disclaimant will be treated as having predeceased the participant and his or her share will be paid in accordance with § 1651.10.

§ 1651.18 Payment to one bars payment to another.

Payment made to a beneficiary(ies) in accordance with this part, based upon information received before payment, bars any claim by any other person.

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