(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) For each contingent beneficiary, identify the primary beneficiary whose share the contingent beneficiary is to receive in the event the primary beneficiary dies before payment is made.

(8) Not attempt to designate beneficiaries for the participant's traditional balance and the participant's Roth balance separately.

(d) *Will*. A participant cannot use a will to designate a TSP beneficiary.

[70 FR 32216, June 1, 2005, as amended at 75 FR 44066, July 28, 2010; 77 FR 26427, May 4, 2012]

§ 1651.4 How to change or cancel a designation of beneficiary.

(a) *Change*. To change a designation of beneficiary, the participant must submit to the TSP record keeper a new TSP designation of beneficiary form meeting the requirements of § 1651.3 to the TSP record keeper. If the TSP receives more than one valid TSP designation of beneficiary form, it will honor the form with the latest date signed by the participant. A participant may change a TSP beneficiary at any time, without the knowledge or consent of any person, including his or her spouse.

(b) *Cancellation*. A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid designation of beneficiary form meeting the requirements of § 1651.3, or a letter. If the participant uses a letter to cancel a designation of beneficiary, it must be signed and witnessed in the same manner as a TSP designation of beneficiary

form; it must explicitly state that all prior designations are canceled; and the TSP record keeper must receive it on or before the date of the participant's death.

(c) *Will*. A participant cannot use a will to change or cancel a TSP designation of beneficiary.

[70 FR 32216, June 1, 2005]

§ 1651.5 Spouse of participant.

(a) For purposes of payment under § 1651.2(a)(2) and establishment of beneficiary participant accounts under § 1651.19, the spouse of the participant is the person to whom the participant was 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. The state law of the participant's domicile will be used to determine whether the participant was married at the time of death.

(b) If a person claims to have a marriage at common law with a deceased participant, the TSP will pay benefits to the putative spouse under § 1651.2(a)(2) in accordance with the marital status shown on the most recent Federal income tax return filed by the participant. Alternatively, the putative spouse may submit a court order or administrative adjudication determining that the common law marriage is valid.

[71 FR 9897, Feb. 28, 2006, as amended at 75 FR 78879, Dec. 17, 2010]

§ 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.

(d) *Parentage disputes.* If the identity of the father or mother of a child is in dispute or otherwise unclear (e.g., only one parent is listed on a birth certificate), the purported child must submit to the TSP either:

(1) A court order or other administrative finding establishing parentage; or

(2) Documentation sufficient for establishing parentage under the law of the state in which the participant was domiciled at the time of death.

[62 FR 32429, June 13, 1997, as amended at 74 FR 63063, Dec. 2, 2009]

§ 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 designated beneficiary who predeceases the participant will be paid pro rata to the participant's other designated beneficiary or beneficiaries. If no designated beneficiary survives the participant, the account will be paid according to the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a participant designated a trust or other entity as a beneficiary and the entity does not exist on the date of the participant's death, or is not created by will or other document that is effective upon the participant's death, the amount designated to the entity 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 TSP designation of beneficiary form dies before the participant, the beneficiary's share will be paid equally to other living beneficiaries 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. A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died, and when.

[70 FR 32216, June 1, 2005]