

Proposed Rules

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed rule to implement two provisions of the Thrift Savings Plan Act of 1996. The first specifies how long a separated participant can maintain a Thrift Savings Plan (TSP) account and the second expands TSP withdrawal options by allowing in-service withdrawals.

DATES: Comments must be received by September 8, 1997.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942-1662.

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 (codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479). The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. The Board published its current withdrawal regulations, which are codified at 5 CFR part 1650, in final form on February 21, 1995 (60 FR 9595).

On September 30, 1996, the President signed the Thrift Savings Plan Act of 1996 (the TSPA), Pub. L. 104-208, div. A, title I, sec. 101(f), section 659. Before passage of the TSPA, a participant was required to make a valid withdrawal

election by February 1 of the year following the latest of (1) the date upon which the participant attained age 65, (2) the date that was 10 years after the effective date of the participant's first TSP contribution, or (3) the date the participant separated from Federal service. The Board was required by 5 U.S.C. 8433(f)(2) to purchase an annuity for a participant who did not make such an election. However, the Board never purchased an annuity for a participant under this rule because the tenth anniversary of the first TSP contributions did not occur until April 1997.

Section 203(a)(4) of the TSPA amended FERSA to provide that a participant must withdraw his or her account balance in a single payment or begin receiving his or her TSP account balance in monthly payments (or in the form of a TSP annuity) by April 1 of the later of (1) the year following the year in which the participant reaches age 70½, or (2) the year following the year in which the participant separates from Federal service. If the participant does not make an election so that payment can be made by this deadline, the Board must use his or her TSP account to purchase an annuity for the participant. The first calendar year in which withdrawals will be required under the amendment is 1998.

Before passage of the TSPA, FERSA also provided at 5 U.S.C. 8433(a) that a TSP participant could only withdraw his or her account after separating from Government employment. Therefore, in-service TSP withdrawals were not permitted. Section 203(a)(6) of the TSPA amended FERSA to allow in-service withdrawals under two circumstances. Under 5 U.S.C. 8433(h)(1)(A), a participant who has turned age 59½ can withdraw an amount up to his or her entire vested TSP account balance before separating from Government employment. A participant is allowed only one withdrawal under this provision. In addition, under section 8433(h)(1)(B), a participant can obtain a withdrawal before separating from Government employment on the basis of financial hardship. A financial hardship withdrawal is limited to the amount the participant contributed to the TSP (plus the earnings attributed to those contributions). There is no limit on the number of such withdrawals.

This proposed rule reorganizes and amends the Board's withdrawal regulations at 5 CFR part 1650 to implement the TSPA amendments. Subpart A of part 1650 contains general information and rules. This proposed rule adds new definitions to § 1650.1 and rewrites the sections that describe withdrawal eligibility (§ 1650.2) and the effect of a freeze on a participant's account (renumbered as § 1650.3) to make subpart A apply to both post-employment and in-service withdrawals. Also, this proposed rule removes § 1650.5 (regarding outstanding loans) as an independent section within subpart A. Before its removal, § 1650.5 explained that a participant must repay an outstanding TSP loan or that his or her loan must be declared a taxable distribution before the participant could obtain a post-employment withdrawal. An outstanding TSP loan will not prevent an in-service withdrawal. Because the substance of § 1650.5 is still a principle of post-employment withdrawal eligibility, it has been moved to new § 1650.2(c).

Subparts B and C describe post-employment withdrawals and explain the post-employment withdrawal process. The procedures which govern post-employment withdrawals will remain the same, and the only proposed substantive change to those subparts is a revision of § 1650.15 (which is § 1650.13 in the Board's current regulations) to reflect the new required date for receiving a post-employment withdrawal. However, to make room for the two new subparts which govern in-service withdrawals, the subparts B and C headings have been renamed and each of the subparts' sections have been renumbered. To provide a more convenient resource to the reader, the Board will republish subparts B and C in their entirety.

This proposed rule creates new subparts D and E in part 1650 to describe in-service withdrawals and explain the in-service withdrawal process. Section 1650.30 describes the age-based in-service withdrawal; § 1650.40 explains how to obtain one; and § 1650.42(a) describes the participant's payment options. A participant is allowed only one age-based in-service withdrawal. A participant who has reached age 59½ can withdraw up to his or her entire vested TSP account balance as a single

payment. Because an age-based in-service withdrawal is an eligible rollover distribution, a participant can ask the TSP to transfer all or a portion of the withdrawal to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Any amount withdrawn but not transferred is subject to mandatory 20 percent Federal income tax withholding. An age-based in-service withdrawal is not subject to the additional 10 percent tax imposed by the Internal Revenue Code (I.R.C. 72(t)) on the early withdrawal of retirement savings.

Section 1650.31 describes the financial hardship in-service withdrawal; § 1650.41 explains how to obtain one; and § 1650.42(b) describes the participant's payment options. Only financial hardships described under § 1650.31 can be used as the basis for requesting an in-service withdrawal, and only sums contributed by the participant and their attributable earnings can be withdrawn for this purpose.

There are two types of qualifying financial hardships: Insufficient cash flow and extraordinary expenses. Under § 1650.31(a)(1), a participant will show financial hardship by demonstrating that his or her monthly cash flow cannot meet ordinary monthly household expenses. Under § 1650.31(a)(2), a participant will show financial hardship by demonstrating that he or she has incurred an unreimbursed and unpaid extraordinary expense which cannot be met by his or her monthly cash flow. Extraordinary expenses are limited to medical expenses relating to the care or treatment of the participant, the participant's spouse, or the participant's dependents; household improvements needed on account of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents; personal casualty loss suffered by the participant; and legal costs associated with the participant's separation and divorce. A participant can qualify for a financial hardship withdrawal by meeting one of the tests or by showing a combination of negative cash flow and extraordinary expenses.

Like an age-based withdrawal, a financial hardship withdrawal is an eligible rollover distribution; therefore, the participant may ask the TSP to transfer all or a portion of the withdrawal to an IRA or other eligible retirement plan. The TSP will withhold for Federal income tax purposes 20 percent of any amount withdrawn but not transferred. The hardship withdrawal applicant can ask the TSP to increase his or her withdrawal so that

the net disbursement after the mandatory withholding will be the amount requested (or the maximum amount for which the participant qualifies, if less than the amount requested). This is subject to the availability of employee contributions and earnings in the participant's account.

Section 1650.32 explains that a participant can continue to contribute to the TSP after obtaining an age-based withdrawal, but is not eligible to contribute to the TSP for a period of six months after obtaining a financial hardship withdrawal. After six-months ineligibility to contribute, the participant can resume TSP contributions only by making a new TSP election on Form TSP-1. Generally, a participant whose TSP contributions were discontinued because of a financial hardship withdrawal is not required to wait until a TSP open season to submit Form TSP-1. A FERS participant's agency automatic (1%) contributions will continue following either type of in-service withdrawal.

Finally, § 1650.33 explains that a TSP loan and an in-service withdrawal are not interchangeable and that a TSP withdrawal cannot be repaid.

In addition to amending the withdrawal provisions of part 1650, this proposed rule would amend the spousal rights provisions. The TSPA provides that the spouse of a FERS participant must consent to an in-service withdrawal and that the spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal. These spousal rights, which mirror those applicable to TSP loans, will be incorporated into the withdrawal regulations. This proposed rule would make no other changes to the spousal rights provisions of the withdrawal regulations other than by reorganizing them for purposes of clarity and ease of reading.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of

these regulations on State, local, and tribal governments and on the private sector has been assessed. These regulations 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 1650

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,
Executive Director.

For the reasons set out on the preamble, the Federal Retirement Thrift Investment Board proposes to revise 5 CFR part 1650 to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.

1650.1 Definitions.

1650.2 Eligibility for a TSP withdrawal.

1650.3 Frozen accounts.

Subpart B—Post-Employment Withdrawals

1650.10 Single payment.

1650.11 Monthly payments.

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1650.13 Transfer of withdrawal payments.

1650.14 Deferred withdrawal elections.

1650.15 Required withdrawal date.

1650.16 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Post-Employment Withdrawals

1650.20 Information to be provided by agency.

1650.21 Accounts of more than \$3,500.

1650.22 Accounts of \$3,500 or less.

Subpart D—In-Service Withdrawals

1650.30 Age-based withdrawals.

1650.31 Financial hardship withdrawals.

1650.32 Contributing to the TSP after an in-service withdrawal.

1650.33 Uniqueness of loans and withdrawals.

Subpart E—Procedures for In-Service Withdrawals

1650.40 How to obtain an age-based in-service withdrawal.

1650.41 How to obtain a financial hardship in-service withdrawal.

1650.42 Taxes related to in-service withdrawals.

Subpart F—[Reserved]

Subpart G—Spousal Rights

1650.60 Spousal rights pertaining to post-employment withdrawals.

1650.61 Spousal rights when a separated participant changes a post-employment withdrawal election.

- 1650.62 Spousal rights pertaining to in-service withdrawals.
- 1650.63 Executive Director's exception to the spousal notification requirement.
- 1650.64 Executive Director's exception to requirement to obtain the spouse's signature.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart A—General

§ 1650.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month-end before the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP obtained by a participant who is still employed by the Government.

Monthly processing cycle means the process, beginning on the evening of the fourth business day of the month, by which the record keeper allocates the amount of earnings to be credited to participant accounts in the Plan and authorizes disbursements from the Plan.

Participant means any person with an account in the Thrift Savings Plan.

Post-employment withdrawal means a withdrawal from the TSP obtained by a participant who has separated from Government employment, as described at 5 CFR 1650.1.

Reimbursement means a payment made to or on behalf of a participant by any person or entity (including an insurance company) to cover the cost of an extraordinary expense described in § 1650.31(a)(2).

Separation from Government employment means the cessation of employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and including a

person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or Plan means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan (TSP) contribution election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds, and made effective pursuant to 5 CFR part 1600.

Thrift Savings Plan Service Office means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, PO Box 61500, New Orleans, Louisiana 70161–1500.

Valuation date means, for purposes of a required minimum distribution, the last day of the calendar year immediately preceding the year for which a distribution is made.

§ 1650.2 Eligibility for a TSP withdrawal.

(a) A participant who separates from Government employment, as described in § 1650.1, can withdraw his or her account by one of the withdrawal methods described in subpart B of this part using the procedures set out in subpart C of this part.

(b) A separated participant who is reemployed in a position in which he or she is eligible to participate in the TSP is subject to the following withdrawal eligibility rules:

(1) A participant who is reemployed in a TSP-eligible position on or before the 31st full calendar day after separation cannot withdraw his or her TSP account (except for an in-service withdrawal described in subpart D of this subpart). If the participant is scheduled for an automatic cashout, as described in § 1650.22, the cashout will be canceled if the participant informs the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days of separation.

(2) A participant who is reemployed in a TSP-eligible position more than 31 full calendar days after separation may withdraw the portion of his or her account balance which is attributable to the earlier period of employment. If the amount attributable to the earlier period of employment is greater than \$3,500, the participant must submit a properly

completed withdrawal request (Form TSP–70) selecting a withdrawal option that results in an immediate withdrawal. However, a Form TSP–70 will not be accepted unless the TSP records indicate that the former employing agency reported the participant as separated from Government employment. If a participant has elected to receive monthly payments under § 1650.11, upon report by the agency that the participant is not separated, payments will not be made and, if already started, will stop.

(c) A participant who has not separated from Government employment can elect a withdrawal option described in subpart D of this part by following the procedures set out in subpart E of this part.

(d) A participant cannot make a post-employment withdrawal until any outstanding TSP loan has been either repaid in full or declared to be a taxable distribution. An outstanding TSP loan does not affect a participant's eligibility for an in-service withdrawal.

(e) All withdrawals are subject to the rules relating to spouse's rights (found in subpart G of this part), domestic relations orders, alimony and child support legal process, and child abuse enforcement orders (5 CFR part 1653). Post-employment withdrawals are also subject to the Internal Revenue Code's required minimum distribution rules.

§ 1650.3 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a pending retirement benefits court order, an alimony or child support enforcement order, a child abuse enforcement order, or as a result of a freeze placed on the account by the Board for another reason.

Subpart B—Post-Employment Withdrawals

§ 1650.10 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.11 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount. The amount must be at least \$25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than

the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than \$25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than \$25, it will be increased to \$25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiply table V, 26 CFR 1.72-9. There is no \$25 minimum monthly payment under this method. In the year payments begin, the monthly payment amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment amount.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1659.12 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be \$3,500 or more

in order for the TSP to purchase an annuity. The TSP will send forms to a participant who chooses this method which ask him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expectancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July-September period in 1993 and the July-September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor.

(4) A joint life annuity, with level payments, for the participant and

another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an "insurable interest" in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of

monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to allow participants to purchase annuities of the eliminated type or containing the eliminated feature for five years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.13 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an "eligible rollover distribution," as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions;

(1) A single payment, as described in § 1650.10;

(2) Monthly payments, as described in § 1650.11, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.11(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.11(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.14 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.10, 1650.11 or 1650.12 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the

date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.15 Required withdrawal date.

(a) A participant must withdraw his or her account under § 1650.10 or begin receiving payments under §§ 1650.11 or 1650.12 by April 1 of the year following the later of the year in which:

(1) The participant turns 70½; or

(2) The participant separates from Government employment. However, in no event will a withdrawal be required under this paragraph until 1998.

(b) A separated participant may elect to withdraw his or her account or begin receiving payments before the date described in paragraph (a) of this section, but is not required to do so.

§ 1650.16 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by the close of business on the day before the monthly processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the monthly processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the monthly processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their accounts invested in the C or F Funds.

Example 1. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purchase. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May monthly processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP-70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP-70 is received and processed by the TSP record keeper by the close of business on the day before the May monthly processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then.

If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP record keeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Post-employment Withdrawals

§ 1650.20 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency, it cannot process a post-employment withdrawal for the participant. A post-employment withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.21 Accounts of more than \$3,500.

A participant whose account balance is more than \$3,500 must submit a properly completed withdrawal election on Form TSP-70, Withdrawal Request, and any other form required by the TSP, in order to elect a post-employment withdrawal of his or her account balance.

§ 1650.22 Accounts of \$3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is \$3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third monthly processing cycle following the date of the notice if the account is still \$3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of the payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (a) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any post-employment withdrawals made to a participant whose account balance is \$3,500 or less.

(d) If a participant's account balance is \$3,500 or less after separation but later increases to more than \$3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than \$5.00.

Subpart D—In-Service Withdrawals

§ 1650.30 Age-based withdrawals.

(a) A participant who reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based in-service withdrawal request must be at least \$1,000.

(b) The participant may request that the TSP transfer all or a portion of the

withdrawal to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. If a participant chooses to receive directly all or a portion of the withdrawal, the TSP will withhold for Federal income tax purposes 20 percent of all amounts paid directly to the participant.

(c) A participant is permitted only one age-based in-service withdrawal.

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who demonstrates financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP and their attributable earnings in a single payment to meet certain specified financial obligations. The amount of a financial hardship in-service withdrawal request must be at least \$1,000. A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) The participant's monthly cash flow is negative, *i.e.*, net income is less than ordinary monthly household expenses based on TSP calculations; and/or

(2) The participant has incurred or will incur within the next six months an extraordinary expense which he or she has not paid, for which there has not been and will not be reimbursement (as defined in § 1650.1), and which cannot be met by his or her monthly cash flow over a period of six months.

Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductions. However, the following IRS allowable expenses are excluded from TSP unreimbursed medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the financial hardship determination.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents, which is eligible for deduction as a medical expense for Federal income tax

purposes, but without regard to the IRS income limitations on deductions or the fair market value of the property. Household improvements are changes to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person;

(iii) The cost of repairs or replacement resulting from casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductions, fair market value of the property, or number of events. This is sudden property loss resulting from damage or destruction by fire, storm, or other casualty, or due to theft of property; and

(iv) Legal costs, which are defined as attorney fees and court costs, associated with separation or divorce. Unpaid legal costs do not include alimony or child support payments or settlements a participant must pay a spouse or former spouse.

(b) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3) The gross amount which would, subject to a request made under § 1650.42(b), result in a net disbursement to the participant (after the mandatory Federal income tax withholding) of enough funds to both:

(i) Make up the participant's negative cash flow for a period of six months in the case of a financial hardship withdrawal based on ordinary monthly household expenses; and

(ii) Pay the extraordinary expense upon which the participant's financial hardship withdrawal is based. If the participant has a negative cash flow, the amount of the net disbursement based on extraordinary expense is equal to the amount of the extraordinary expense. If there is a positive cash flow, the amount is equal to the amount of the expense minus six times the amount of the calculated monthly positive cash flow.

§ 1650.32 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months,

beginning with the first pay date 45 days after the date of the withdrawal; therefore, his or her TSP contributions (and any applicable matching contributions) will be discontinued by his or her agency upon notification by the TSP. A participant whose TSP contributions were discontinued by his or her agency because of a hardship withdrawal can resume contributions any time after expiration of the six month period by submitting a new TSP Election Form (TSP-1). If a participant voluntarily terminated TSP contributions, he or she can resume contributions at the expiration of the six-month period, or in the next open season during which the participant would be eligible to submit a new Form TSP-1, whichever is later.

§ 1650.33 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal, and *vice versa*; nor can an in-service withdrawal be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.40 How to obtain an age-based in-service withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP Service Office a properly completed withdrawal election on Form TSP-75, Age-Based In-Service Withdrawal Request.

§ 1650.41 How to obtain a financial hardship in-service withdrawal.

To request a financial hardship in-service withdrawal, a participant must submit to the TSP Service Office a properly completed request for withdrawal on Form TSP-76, Financial Hardship In-Service Withdrawal Request, a current earnings and leave statement, and supporting documentation for any extraordinary expenses listed on the application.

§ 1650.42 Taxes related to in-service withdrawals.

(a) An in-service withdrawal is an eligible rollover distribution under the Internal Revenue Code (IRC), and the IRC requires that the Board withhold at least 20 percent for Federal income tax purposes from any portion of the withdrawal that is not directly transferred to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. A participant who wants the TSP to transfer all or a portion of an in-service withdrawal to an IRA or other eligible retirement plan must submit to the TSP Service Office a properly completed Form TSP-75-T,

Transfer of In-Service Withdrawal. If the participant does not make a transfer election, the withdrawal will be disbursed in the form of a single payment minus the mandatory tax withholding. The mandatory withholding cannot be waived, although a participant can elect to have additional taxes withheld by submitting Form W-4P, Withholding Certificate for Pension or Annuity Payments, to the TSP Service Office.

(b) If a participant applies for a financial hardship in-service withdrawal and does not make a transfer election, he or she can request the TSP to remove additional amounts from his or her TSP account so that the amount received after the mandatory 20 percent tax withholding is the amount requested (or for which the participant qualifies, if that amount is less than the amount requested). This option may be limited by the amount of employee contributions and attributable earnings available for withdrawal.

Subpart F—[Reserved]

Subpart G—Spousal Rights

§ 1650.60 Spousal rights pertaining to post-employment withdrawals.

(a) The spousal rights described in this section and in § 1650.61 only apply to post-employment withdrawals when the participant's vested TSP account balance exceeds \$3,500.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the withdrawal form is processed by the TSP. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) The spouse of a FERS participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund when the participant elects a post-employment withdrawal. The participant may make a different withdrawal election only if his or her spouse waives the right to this annuity. To show that the spouse has waived the right to this annuity, the participant must submit to the TSP record keeper Form TSP-70, Withdrawal Election, or Form TSP-11-C, Spouse Information and Waiver, signed by his or her spouse. Once a form containing the spouse's

waiver has been submitted to the TSP record keeper, the spouse's waiver is irrevocable for purposes of that form.

§ 1650.61 Spousal rights when a separated participant changes post-employment withdrawal election.

(a) The spouse of a CSRS participant is entitled to notice if the participant changes his or her post-employment withdrawal election, unless the participant was granted an exception under § 1650.63 to the spouse notification requirement within one year of the date the form requesting the change is processed by the TSP. The participant must provide the TSP record keeper with the spouse's current address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(b) A married FERS participant who has made a post-employment withdrawal election and who wants to elect another withdrawal method (other than the annuity required in § 1650.60(c)) must obtain a waiver from the spouse to whom he or she is married on the date the new withdrawal form is signed, unless:

(1) That spouse previously signed a waiver of the required annuity in connection with an earlier post-employment withdrawal election made by the participant; or

(2) The participant was granted within one year of the date on which the new withdrawal form is received by the TSP an exception under § 1650.64 to the requirement to obtain that spouse's signature for an in-service or post-employment withdrawal election.

Once a form containing the spouse's waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.62 Spousal rights pertaining to in-service withdrawals.

(a) The spousal rights described in this section apply to all in-service withdrawals and do not depend on the amount of the participant's vested account balance or the amount requested to be withdrawn.

(b) The spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal, unless the participant was granted within one year of the date on which the withdrawal form is received by the TSP an exception to the notice requirement under § 1650.63. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the most recent address provided by the participant.

(c) A participant covered by FERS must obtain the consent of his or her spouse before obtaining an in-service withdrawal unless the participant was granted, within one year of the date on which the new withdrawal form is received by the TSP, an exception to a signature requirement under § 1650.64. To show spousal consent, a participant must submit to the TSP record keeper Form TSP-75, Age-Based In-Service Withdrawal Request, or Form TSP-76, Financial Hardship In-Service Withdrawal Request, signed by his or her spouse. Once a form containing the spouse's consent has been submitted to the TSP record keeper, the spouse's consent is irrevocable for purposes of that form.

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) Whenever this subpart requires the Executive Director to give notice of an action to the spouse of a participant, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception to a notification requirement based on unknown whereabouts must be submitted to the Executive Director on Form TSP-16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) stating that the spouse's whereabouts cannot be determined;

(2) A police or governmental agency determination signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, and state the efforts the participant has made to locate the spouse. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories or directory assistance for the city of the spouse's last known address. Negative statements such as "I have not seen nor heard from him" or "I have not had contact with her" are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant does not know the whereabouts of his or her spouse.

(iii) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 Executive Director's exception to requirement to obtain the spouse's signature.

(a) Wherever this subpart requires a spouse's consent to a loan or withdrawal or a waiver of the right to a survivor annuity, an exception to this requirement may be granted if the participant establishes to the satisfaction of the Executive Director that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.63; or

(2) Due to exceptional circumstances, requiring the spouse's signature would be otherwise inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a governmental agency determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances are narrowly construed and includes circumstances such as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election by a separated participant or an in-service withdrawal request by a participant in the Federal service received within one year of an approved exception will be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal by a separated participant or an in-service withdrawal by a participant in the Federal service and the one-year period of validity of an approved exception also apply to exceptions for loans under 5 CFR 1655.18.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150-AF62

Initial Licensed Operator Examination Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require all nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC currently uses to evaluate the competence of individuals applying for operator licenses at those plants. The proposed amendment would require the licensee to submit each examination and test for the NRC's review and approval and would preserve the NRC's authority to prepare the examinations and tests, as necessary, if it loses confidence in a licensee's ability to prepare these examinations acceptably. In addition, the NRC would periodically invoke this authority in order to maintain the proficiency of its own license examiners.

DATES: Submit comments by October 21, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

Single copies of this proposed rulemaking may be obtained by written request or telefax ((301) 415-2260) from

Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT:

Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6231; e-mail hst@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for an operator license, to prescribe uniform conditions for licensing such individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR part 55 requires applicants for operator licensees to pass an examination that satisfies the basic content requirements specified in the regulation. Although neither the AEA nor part 55 specifies who must prepare, proctor, or grade these examinations, the NRC has traditionally performed those tasks itself or through its contract examiners. In accordance with 10 CFR 170.12(i), NRC staff and contractual costs are recovered from facility licensees who receive examination services. The NRC and its contract examiners have used the guidance in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," to prepare the initial operator licensing examinations. This document has been revised as experience has been acquired in preparing these examinations. The current version is designated Interim Revision 8.¹

The intended modifications to 10 CFR part 55 would allow facility licensees to have greater participation in the initial operator licensing process and enable the NRC to eliminate contractor assistance in this area. Between \$3 million and \$4 million in contractor support for the preparation and

administration of the initial operator licensing examinations and for support of requalification program inspections would be eliminated.

On April 18, 1995, the Commission approved the NRC staff's proposal to initiate a transition process to revise the operator licensing program and directed the NRC staff to carefully consider experience from pilot examinations before fully implementing the changes. On August 15, 1995, the NRC staff issued Generic Letter (GL) 95-06, "Changes in the Operator Licensing Program,"² outlining the revised examination development process and soliciting volunteers to participate in pilot examinations to evaluate and refine the methodology.

Between October 1, 1995, and April 5, 1996, the NRC staff reviewed and approved 22 operator licensing examinations, including both the written examinations and the operating tests, prepared by facility licensees as part of a pilot program. These examinations were prepared using the guidance in Revision 7 (Supplement 1) of NUREG-1021 and the additional guidance in GL 95-06.² These examinations were used to test 146 reactor operator (RO) and senior reactor operator (SRO) applicants.

The results of the pilot examinations were discussed in SECY-96-123, "Proposed Changes to the NRC Operator Licensing Program," dated June 10, 1996. Based on the results of the pilot program, the staff recommended that the Commission approve the implementation of the new examination process on a voluntary basis until rulemaking could be completed to require all power reactor facility licensees to prepare the entire initial examination for reactor operators and senior reactor operators and to proctor the written portion of the examination. On July 23, 1996, the Commission authorized the staff to continue the pilot examination process on a voluntary basis and requested the staff to develop a detailed rulemaking plan to justify the changes that may be necessary to 10 CFR part 55. The Commission also directed the staff to address a number of additional items (e.g., pros, cons, and vulnerabilities) regarding the revised examination process to facilitate a Commission decision on whether to implement the revised process on an industry-wide basis.

On September 25, 1996, the staff forwarded the requested rulemaking

¹ Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555; the PDR's mailing address is Mail Stop LL-6; telephone (202) 634-3273, fax (202) 634-3343. Interim Revision 8 is also available for downloading from the Internet at "http://www.nrc.gov."

² Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555; the PDR's mailing address is Mail Stop LL-6; telephone (202) 634-3273; fax (202) 634-3343.