500 North Capitol Street, Washington, D.C. 20549, (202) 755–0230.

SUPPLEMENTARY INFORMATION: The Commission today adopted a rule under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act"), to define the conditions under which, if satisfied, an affiliated person [1] of an investment company could receive a commission, fee or other remuneration as broker in a securities transaction for that company which would be deemed not to exceed the "usual and customary broker's commission" for purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 17(e)(2)(A)]. This rule was proposed by the Commission as proposed rule 17e–2 under the Act [17 CFR 270.17e–2], but because of the Commission's rescission today of then existing rule 17e–1 under the Act [17 CFR 270.17e–1] [2] the Commission has redesignated and adopted this rule as new rule 17e–1 under the Act [17 CFR 270.17e–1].

In response to its request for comments regarding the proposed rule, as announced in Investment Company Act Release No. 10605 (Feb. 27, 1979), 44 FR 12202 (Mar. 6, 1979), the Commission received and considered seven letters. Except for a technical change in the findings regarding such transactions which are required to be made by an investment company's directors, the Commission has determined to adopt the rule as proposed.

Final Rulemaking

The rule provides that, for purposes of section 17(e)(2)(A) of the Act, a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if certain conditions are satisfied. The reasons for the Commission's proposing to adopt rule 17e–1 were discussed thoroughly in Investment Company Act Release No. 10605. Persons interested in more detailed discussions of the various conditions of the rule, which are summarized below, should refer to that release.

First, such commission, fee or other remuneration is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable securities being traded on a securities exchange during a comparable period of time.

Second, the investment company's directors, including a majority of the directors who are not interested persons of the investment company,[3] (a) adopt procedures reasonably designed to provide that such commission, fee, or other remuneration is consistent with the standard described above,[4] (b) review these procedures at least annually to determine that they continue to be appropriate, and (c) determine at least quarterly that such transactions have complied with these procedures. The Commission has deleted from the rule as adopted a requirement in the proposed rule that would have required the directors to determine specifically that such transactions were consistent with the purposes of the rule. The Commission believes that transactions which comply with procedures appropriately established by investment company directors pursuant to this rule inherently would be consistent with the purposes of this rule. Nonetheless, the Commission expects that investment company directors, in establishing procedures under the rule and determining compliance with such procedures, will address the concerns embodied in section 17(e) of the Act against overreaching.

Finally, the rule provides certain recordkeeping requirements.

Authority, Effective Date

The Commission adopts new rule 17e–1 pursuant to the provisions of section 6(c) [15 U.S.C. 80a–6(c)], section 31(a) [15 U.S.C. 80a–30(a)], and section 38(a) [15 U.S.C. 80a–37(a)] of the Act.

Because the rulemaking is exemptive in nature and not the exclusive method for complying with the provisions of section 17(e)(2) of the Act,[5] it is effective immediately.

Text of Adopted Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding new § 270.17e–1 as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 80a–17(e)(2)(A)], a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if:

(a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time;

(b) The board of directors, including a majority of the directors of the investment company who are not interested persons thereof, (1) have adopted procedures which are reasonably designed to provide that such commission, fee or other remuneration is consistent with the standard described in paragraph (a) of this section, (2) review no less frequently than annually such procedures for their continuing appropriateness, and (3) determine no less frequently than quarterly that all transactions effected pursuant to this rule during the preceding quarter were effected in compliance with such procedures; and

(c) The investment company (1) shall maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section, and (2) shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 20, 1979.

[FR Doc. 79–19731 Filed 6–25–79; 8:45 am]

BILLING CODE 8010–01–M

[1] The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)].

[2] Investment Company Act Release No. 10740 (June 20, 1979).

[3] The term "interested person" is defined in section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)].

[4] The board of directors may delegate to a directorial committee or other persons associated with the investment company the drafting task of preparing recommended procedures to be considered by the board as a whole. Of course, the board is responsible for any procedures that it ultimately chooses. See Lasker v. Burks, 47 U.S.L.W. 4494, 4496 n. 10 (May 15, 1979) [minimum standards applying to decisions which investment company directors may be called upon to make]. Moreover, in considering any recommendations in the course of making such a determination, the board should request from the initial draftsmen and evaluate such information as may reasonably be necessary to determine if the procedures would comply with the requirements of paragraph (b)(1) of the rule. Compare section 15(c) of the Act [15 U.S.C. 80a–15(c)] [procedures for directors' approving an investment advisory contract].

[5] See Investment Company Act Release No. 10605, proposing this rule, at n.5.

17 CFR Part 270

[Release No. IC-10740]

Investment Company Act of 1940; Remuneration Permitted Affiliated Persons of Registered Investment Companies Acting as Brokers in Over-the-Counter Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Rule rescission.

SUMMARY: The Commission today is rescinding, as obsolete, a rule which, notwithstanding the statutory maximum remuneration prescribed by the Investment Company Act of 1940, authorized an affiliated person of a registered investment company who is acting as broker in an over-the-counter securities transaction involving that company to receive remuneration exceeding 1 percent of the sale price, if such remuneration generally equals the fixed minimum brokerage commissions prescribed by specified securities exchanges.

EFFECTIVE DATE: June 20, 1979.

FOR FURTHER INFORMATION CONTACT: Mark B. Goldfus, Special Counsel, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. (202) 755-0230.

SUPPLEMENTARY INFORMATION: The Commission today rescinded, as obsolete, rule 17e-1 [17 CFR 270.17e-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"). Rescinded rule 17e-1 had provided that, notwithstanding the statutory maximum remuneration prescribed by section 17(e)(2)(C) of the Act [15 U.S.C. 80a-17(e)(2)(C)], an affiliated person [1] of an investment company or any affiliated person of such person acting as broker in an over-the-counter transaction may receive remuneration exceeding the statutory maximum of 1 percent of the sale price of the securities sold, if such remuneration generally equals the fixed minimum brokerage commissions prescribed by specified securities exchanges.

The reasons for the Commission's proposing to rescind rule 17e-1 were discussed thoroughly in Investment Company Act Release No. 10606 (Feb. 27, 1979), 44 FR 12204 (Mar. 6, 1979). Persons interested in the matter should refer to that release. In response to its request for comments regarding the proposed rescission of rule 17e-1, the Commission received and considered two letters. Both commentators believed that the standards in the rule are obsolete, although one commentator suggested that it be amended to incorporate a new exemptive standard. The Commission believes that any proposed payment of such remuneration in excess of the statutory maximum prescribed in section 17(e)(2)(C) of the Act should be considered hereinafter in the context of an application for an order exempting a particular transaction (or series of related transactions) from the prohibitions and limitations of the Act.[2]

Accordingly, the Commission, having found that the rule is obsolete, has rescinded rule 17e-1 [17 CFR § 270.17e-1] under the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 20, 1979.

[FR Doc. 79-19732 Filed 6-25-79; 8:45 am]

BILLING CODE 8010-01-M

[1] The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)].

[2] "Persons engaged in the securities business cannot be unaware of their obligation to serve the best interest of customers and that interpositioning is bound to result in increased prices or costs." *Delaware Management Company, Inc.*, 43 SEC 392, 400 (1967) (footnote omitted). Accord *Financial Programs, Inc.*, Securities Exchange Act Release No. 11312 (Mar. 24, 1975), 6 SEC Docket 503. In this regard, section 17(e)(2)(C) also does not allow an affiliated broker to retain remuneration for an unneeded service. *Steadman Security Corporation*, Securities Exchange Act Release No. 13685 (June 29, 1977), 12 SEC Docket 1041, 1056, *appeal pending*, No. 77-2415 (5th Cir.).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 281

[Docket No. RM79-13]

Natural Gas Curtailment Interim Regulation for Implementation of Section 401 of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: The Federal Energy Regulatory Commission received petitions requesting rehearing of the Interim Curtailment Rule 44 FR 13464 (March 12, 1979). It has considered the arguments raised in the petitions and has denied them. No changes have been made in the rule.

EFFECTIVE DATE: June 20, 1979.

FOR FURTHER INFORMATION CONTACT: MaryJane Reynolds, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Room 8000, Washington, D.C. 20426, (202) 275-4283.

I. Introduction

On March 6, 1979, the Federal Energy Regulatory Commission (Commission) issued, in Docket No. RM79-13, its "Interim Curtailment Rule" for the period April 1, 1979 through October 31, 1979. The rule implements, for that period, Section 401 of the Natural Gas Policy Act of 1978. On November 1, 1979, the "Interim Curtailment Rule" will be superseded by the Commission's "Final Rule", Order No. 29, issued on May 2, 1979 in Docket No. RM79-15, 44 FR 26855 (May 8, 1979).

Petitions for rehearing of the "Interim Curtailment Rule" were filed by Transcontinental Gas Pipe Line Corporation (Transco), The United States Brewers Association, Inc. (Brewers), Consolidated Edison Company of New York, Inc. (Con Ed), United Gas Pipe Line Company (United), The Great Western Sugar Company (Great Western), Texas Gas Transmission Corporation (Texas Gas), The American Bakers Association (ABA), The General Service Customer Group (GSC), Columbia Nitrogen Corporation and Nipio, Inc. (CNC), The Process Gas Consumers Group, *et al* (PGC), The Fertilizer Institute (Fertilizer) and Air Products and Chemicals, Inc. and The National Food Processors Association, Stouffer Chemical Company and Willamette Industries, Inc. (Agricultural Industries). On May 4, 1979, the Commission issued an order granting rehearing solely for the purpose of reconsideration.

II. Issues Raised on Rehearing

A. *Non-Pipeline Supplies.*—Brewers, ABA, CNC, Fertilizer and Agricultural Industries seek rehearing on the issue of the treatment of non-pipeline supplies in the computation of the deficiency of the essential agricultural user. In § 281.106(b)(1), the calculation of total supply deficiency is defined as the estimated volume of gas required by the eligible end-user minus the estimated volume of natural gas available to the eligible end-user from all sources to meet high-priority uses and essential agricultural uses.

ABA argues that "the statute provides no basis, whatsoever, for the Commission's apparent intent to diminish agricultural priority volumes by the amount of non-pipeline sources of gas that may be available to a user." (Petition at 4). CNC argues that "the Commission may not deny agricultural

users protection under Section 401 of the NGPA and interstate pipeline curtailment plans because of the potential availability of non-pipeline sources, such as emergency gas, self-help gas provided under Order Nos. 533/2 type programs, or peak-shaving facilities of local distribution companies" (Petition at 8). CNC argues that such supplies are not pipeline supplies subject to curtailment.[1]

During the interim period, the Commission simply seeks to provide relief based upon the difference between supply requirements and supply availability. The estimated volume of natural gas available to the eligible end-user includes natural gas from all sources to the extent that such natural gas is actually used by the eligible end-user. This would include emergency gas and Order Nos. 533/2 gas. However, an eligible end-user who does not use such gas for a particular curtailment period need not include such gas within its estimated volume available under § 281.106(b)(1)(ii). The Commission neither authorizes any eligible end-user to refuse available gas from non-pipeline sources nor insulates an eligible end-user from contractual liability for the refusal to take such supplies.

Sebring, cited by certain petitioners, is inapposite. In *Sebring*, certain intervenors sought the inclusion in the curtailment plan of Florida Gas Transmission (FGT) of certain gas owned by Florida Power Corporation and Florida Power and Light which was transported by FGT. Herein, the Commission is not attempting to allocate non-pipeline natural gas.

B. *Volumes for which adjustments may be received.*—In the "Interim Curtailment Rule" the Commission adopted the certification of requirements established by the Secretary of Agriculture. The Commission stated, however, that "the interstate pipeline's supply obligation to direct essential agricultural users is limited to the requirements certified by the Secretary of Agriculture as long as those requirements do not cause a direct end-user to exceed its contractural entitlement with the interstate pipeline or a local distribution company to exceed its contractual entitlement with the interstate pipeline" (Interim Rule at 10).

Brewers, Great Western, ABA, Fertilizer, CNC, and Agricultural Industries (which are essential agricultural users) argue that the Secretary of Agriculture's certification must be adopted without a contractual limitation. On the other hand, GSC, PGC and United argue that essential agricultural use requirements should be measured by the base period utilized in each interstate pipeline's presently effective curtailment plan. Con Ed argues that it is unduly discriminatory to utilize current requirements for essential agricultural uses and base period requirements for high-priority uses.

1. *Contract Limitations.* Brewers argues that the Secretary of Agriculture has sole authority to determine requirements for essential agricultural use. Brewers state that "in certifying the volumetric requirements for an essential agricultural use establishment, the Secretary of Agriculture indicated that the requirements so certified 'shall not necessarily be limited to the *maximum contractual volume* of such Essential Agricultural Use Establishment.'" (Petition at 2–3).

It is correct that the Secretary of Agriculture has not limited certified volumes to existing control volumes. The Commission has not changed the volumes certified by the Secretary of Agriculture. However, the issue is whether pipelines have responsibilites to meet those requirements, regardless of contract or certificate obligations. In the Commission's view, Section 401 requires pipelines to serve the volumes certified by the Secretary of Agriculture provided that the volumes do not exceed contract or certificate volumes. However, Section 401 does not create new contract or certificate obligations for interstate pipelines.

Section 401 of the Natural Gas Policy Act (NGPA) states, in part, that "no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use * * *" unless the curtailment is to protect high-priority users. The key phrase is the *"curtailment plan of an interstate pipeline"*. In *American Public Gas Association* v *FERC*, 587 F. 2d 1089, 1098 (D.C. Cir 1978), the Court stated that:

> "Nevertheless, the purpose of a curtailment plan is to prescribe the manner in which a pipeline that cannot meet its *contractual* [emphasis added] commitments will curtail deliveries of its *own* gas."

Similarly, the Supreme Court in *FERC* v *Transcontinental Gas Pipeline Corp.* 423 U.S. 326, 327–28, (1975) stated that "the [natural gas] shortage is said to require curtailment of *contracted* natural gas deliveries by Transco to its customers during periods of high demand." Finally, in *State of North Carolina* v *FERC* 584 F.2d 1003, 1007 (D.C. Cir. 1978), the Court stated that:

> "When a pipeline company's natural gas supplies become inadequate to meet *contractual* commitments to customers, there must be a provision—through a curtailment plan—for apportioning the diminishing gas supply among the customers." (emphasis added)

Thus, a curtailment plan is a method of allocation of contracted demand for natural gas. Therefore, the protection afforded agricultural use of natural gas by Section 401 of the NGPA does not create new contract obligations between interstate pipelines and their customers.

Increased service by interstate pipelines is governed by Section 7 of the Natural Gas Act (NGA) dealing with certificates of public convenience and necessity while curtailment plans in contrast deal with reductions in existing service. Section 401 of the NGPA does not compel an interstate pipeline to serve an essential agricultural user who is not now served by that pipeline. Absent the issuance of a certificate of public convenience and necessity under Section 7 of the NGA interstate pipelines cannot be required to increase service to existing customers or attach new customers. There was no indication that Congress, in enacting the NGPA, intended to override the certificate requirements of Section 7 of the NGA.

The policies of local distribution companies regarding the addition of new customers is generally subject to state regulation. The Commission does not believe that Section 401 binds state regulators to order local distribution companies to add new customers, increase deliveries or execute new or modified contracts or service agreements. Parties, however, are free to amend their contracts and pipelines are free to file applications for new or amended certificates under Section 7.[2]

2. *Base Period Concept.* In the Interim Rule the Commission adopted the Secretary of Agriculture's certification of requirements for essential agricultural uses, subject to the aforementioned contract limitation. The Secretary of Agriculture certified certain volumes which may be in excess of base period volumes for any specific pipeline.

GSC argues that "not only does the Commission rule violate the base period concept but it elevates essential

[1] CNC cites *Sebring Utilities Commission* v *FERC* Case No. 77–2911, (5th Cir. March 20, 1979) in support of its argument.

[2] Great Western also argues in its Petition for Rehearing that its pipeline supplier Montana-Dakota Utilities Company (MDU) is misinterpreting the contract limitation. However, Great Western has filed a petition for a Declaratory Order on the question of construction of its contract. Docket No. TC79–38. Accordingly, the contract construction question between Great Western and MDU is not addressed in this Petition for Rehearing.

agricultural uses of natural gas to a preferred status—a result inconsistent with the provisions of the Natural Gas Act requiring that curtailment plans be just and reasonable and not unduly discriminatory and preferential." (Petition at 1) Con Ed raises essentially the same argument.[3] PGC argues that:

"It is fundamentally inappropriate for the FERC to defer to the USDA on the growth issue because both the recent energy legislation and the Natural Gas Act clearly indicate that decisions on base periods can only be made by the FERC. Further, the decision must be based on consideration of factors such as gas supply, continuity of service and discrimination. These are factors about which the USDA has no expertise, and which the Commission did not consider in adopting the interim rule" (Petition at 7).

It is the position of the Commission that the measurement of requirements for essential agricultural uses pursuant to one standard and the measurement of requirements for all other end uses pursuant to another standard is a preference mandated by Section 401(c), which gives the Secretary of Agriculture authority to certify the natural gas requirements of essential agricultural uses. The Commission believes it is required by law to accept that certification to the extent that it is applicable to the curtailment plan of an interstate pipeline.[4] No such provision exists with regard to high-priority users.

As the Commission stated in Order No. 29, "Final Rule" Docket No. RM79–15, issued May 2, 1979, 44 FR 26855, 26857 (May 8, 1979):

"The Commission's reading of Section 401, amply supported by the rulemaking record indicates that Congress intended to up-grade the priority classification of essential agricultural users while specifically protecting high priority users. However, Congress did not mandate * * * high-priority load growth."

PGC argues that to allow increases above base period volumes violates *Granite City Steel Company* v. *FPC*, 320 F. 2d 711 (D.C. Cir. 1963) even if the Commission retains the contract limitation. The argument fails. First, *Granite City* involved soley matters arising under the Natural Gas Act, and preceded both curtailment and the NGPA. Second, *Granite City* and Section 7(a) do not apply to growth within contract demand. In *American Smelting and Refining Company* v. *FPC*, 494 F.2d 925, 936 (D.C. Cir. 1974) (ASARCO) the Court stated that:

"Quite clearly, this statutory restriction (§ 7(a) and *Granite City*) is not infringed by a curtailment plan based on end use. The curtailment plan does not order the sale of additional gas to one customer to the detriment of another." "* * * we do not think this statutory restriction applies to curtailment plans. Section 7(a) is plainly intended to regulate expansions of service." Since the growth in essential agricultural requirements will be within the contract demand of the direct user or the local distribution company, Section 7(a) and *Granite City* are inapplicable.[5]

United argues that the NGPA intended that essential agricultural requirements be limited to base period volumes. In support of its position United relies upon the statement of the Congress that Congress did not intend section 401 to result in adoption of a new base year for curtailment purposes. To buttress its position, United states that the Senate bill specifically allowed an agricultural preference for "present and expanded capacity" for certain uses, and that the Senate's language was deleted from the bill. As a result, United argues that growth was inferentially rejected.

The Commission has complied with the Congressional intent: The interim rule does not create a new base year for curtailment plans. Moreover, United has misread the legislative history. The Senate bill's "expanded use and capacity" language was limited to feedstock or process fuel use for fertilizer and essential agricultural chemical production. All other essential agricultural uses specified in the Senate bill did not contain similar language. In other words, "expanded use and capacity" in the Senate bill, are words of limitation and their deletion thereby expands the scope of Section 401. Thus, unlike the provisions of the Senate bill, Section 401 provides that the Secretary may determine both what uses qualify as essential agricultural uses and the volumes necessary for such uses. The plain language of Section 401(b) does not limit the Secretary's determination to base period volumes.

C. *Alternate Fuel.*—Section 401(b) of NGPA provides that the protection for essential agricultural uses provided in Section 401(a) need not be afforded if the Commission, in consultation with the Secretary of Agriculture, determines that use of a fuel is reasonably available as an alternative for any agricultural use of natural gas. The Conference Manager's Report states that "the Commission, in consultation with the Secretary of Agriculture, will determine if alternative fuels are economically practicable and reasonably available to meet the needs of agricultural uses * * *."

PGC argues that "the Commission's inclusion in the essential agricultural and high-priority use priorities, of substantial requirements for uses with installed alternate fuel capability renders the Commission's Interim Curtailment Rule aribitrary, capricious, unsupported by the evidence, and contrary to the applicable statutes." PGC further states that "the Commission's duties under the NGPA and the Natural Gas Act preclude it, even in an Interim Rule, from unnecessarily exposing industrial process and feedstock users to natural gas curtailments." (Petition at 2–3). United argues that a strict alternate fuel capabilities test should be applied to all large volume agricultural uses recognized under the terms of Section 401 since "the goal of any sound curtailment policy must be to protect 'to the maximum extent practicable' those end users in most critical need of gas." (Petition at 6). Both PGC and United discuss a 300 Mcf on a peak day cutoff.

The Commission recognizes the necessity of utilizing a meaningful procedure for the determination of alternate fuel practicability and availability.[6] However, it is infeasible for the Commission to create and operate a procedure to analyze the practicability and availability of alternate fuels for essential agricultural uses within the time provided for promulgation of the interim rule. The argument by PGC that alternate fuel determinations should also be applicable to high-priority users is without merit. Section 401, in creating an order of preference for high-priority uses and essential agricultural uses, only creates an alternate fuel determination test for essential agricultural uses. The end uses which qualify for the high-priority classification are entitled to that classification, by law, regardless of the practicability and availability of alternate fuels.

D. *Miscellaneous Issues.*—1. *The Need for Flexibility.* Transco states that the Commission should amplify its order to recognize that "flexibility is required to properly take into account the unique circumstances on individual pipeline systems." (Petition at 4). Transco states

[3] Con Ed, however, would apparently not object to a rolling base period for essential agricultural users if high-priority users were accorded similar treatment.

[4] See discussion pp. 5–7 *Supra.*

[5] For a contrasting interpretation of *Granite City* see initial *Decision* in *Southern Natural Gas Company et al.*, Docket Nos. RP76–67–2 *et al.* However, in its order affirming this decision, the Commission declined to rule on the Presiding Administrative Law Judge's finding with regard to *Granite City.*

[6] *See*, "Notice of Proposed Rulemaking," Procedures for Evaluating the Economic Practicability and Reasonable Availability of Alternative Boiler Fuel for Large Boiler Facilities, Docket No. RM79–40, issued May 2, 1979, 44 FR 26855 (May 8, 1979).

that it is concerned that rigid rules might become a benchmark to formulation of the permanent rules.

There is no need to modify the Interim Rule to recognize flexibility. As Transco concedes, the Commission's order issued March 30, 1979 in *Florida Gas Transmission Company et al*, Docket No. TC79–5 *et al* (including Transco's Docket No. TC79–33) accepted Transco's tariff provision for the Interim Rule without suspension. Furthermore, in Order No. 29, the Commission stated that "nothing in the rule precludes any interstate pipeline and its customers from proposing, as a settlement, a curtailment plan that differs from that set out in our rule."[7]

2. *Curtailment of Low Priority Uses.* GSC states that it is unclear from the Interim Rule whether a distributor must curtail its lower priority loads before seeking an adjustment from its pipeline. GSC notes in its filing (Petition at 5) that the Commission appeared to conclude in *Natural Gas Pipeline Company of America*, Docket No. TC79–15, order issued March 30, 1979, that lower priority loads need not be curtailed prior to seeking an adjustment. GSC's interpretation of the *Natural* decision is correct.

3. *Pipeline-to-Pipeline Adjustments.* Texas Gas argues that the Interim Curtailment Rule is discriminatory in that interstate pipelines who purchase gas from other interstate pipelines are not permitted to request adjustments from these pipeline suppliers under § 281.105. It was the Commission's belief that due to general gas supply projections and the fact that the Interim Rule would only operate during the non-heating season that adjustments could be kept within one interstate pipeline for purposes of administrative feasibility. While rehearing is not being granted on this issue, the Commission will expeditiously entertain any requests for relief from interstate pipeline purchasers who cannot effect adjustments within their own systems.

4. *Interpretation of the Agriculture Rule.* In its joint protest to all of the tariff filings implementing the Interim Rule, PGC sought to have the Commission interpret the Department of Agriculture Rule as to whether the "level of service" which would be received under the presently effective curtailment plan refers to base period service in 1979 for a given period during operation of the Interim Rule. The Commission declined to rule on PGC's request, stating the PGC was seeking clarification of the Agriculture Rule rather than the Commission's Interim Rule.[8]

PGC again seeks such clarification. The Commission denies that request for the same reasons stated in the various March 30, 1979 orders. Moreover, the issue is moot because the Secretary of Agriculture has amended its rule to allow all essential agricultural users current requirements.

The Commission orders: The Petitions for Rehearing of the Interim Curtailment Rule in Docket No. RM79–13 are herein denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–19746 Filed 6–25–79; 8:45 am]

BILLING CODE 6450–01–M

[7] Order No. 29, *Supra* note at slip pages 10–11.

[8] *See EG, Florida Gas Transmission Company, et al*, Docket No. TC79–5 *et al*, issued March 30, 1979.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Filing of Applications and Other Forms

AGENCY: Social Security Adminstration, HEW.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language the rules for filing an application for old-age, survivors', dependents', or disability benefits under the Social Security Act. We made one major change in the existing rules. The change carries out section 332 of the Social Security Amendments of 1977 (Pub. L. 95–216) which limits, with certain exceptions, the retroactivity of applications for benefits reduced because of age. The amendment to the Social Security Act applies to applications for reduced benefits filed on or after January 1, 1978.

EFFECTIVE DATE: These amendments are effective June 26, 1979.

FOR FURTHER INFORMATION CONTACT: James MacDonald, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–7341.

SUPPLEMENTARY INFORMATION:

Background

HEW is revising its regulations to make them clearer and easier for the public to use. As part of this effort, we proposed a complete rewrite of Subpart G, Filing of Applications and Other Forms. We published our proposed revision of Subpart G in the Federal Register with a Notice of Proposed Rulemaking on September 1, 1978 (43 FR 39266).

In the proposed revision, we used simpler, clearer language to restate the application rules and we reorganized them in a more logical and orderly sequence. Also, we deleted provisions in this subpart that are outdated or little used or that are contained or belong in other subparts of the regulations.

In addition to these changes, we clarified an existing rule dealing with a "written statement". The rule provides, under certain circumstances, for using the filing date of a written statement, such as a letter, indicating an intent to claim benefits as the filing date of a claim for benefits. We restated the rule to make clear that the filing date of a claim may be based on a written statement if the applicant files a prescribed application form within a specified time period.

We made one major change in the rules. The change reflects a revision in the law made by section 332 of the Social Security Amendments of 1977 (Pub. L. 95–216). This amendment to the Social Security Act limits, with certain exceptions, the retroactivity of applications for benefits reduced for age filed on or after January 1, 1978. The new rule is contained in § 404.621(a).

Introduction

This subpart is important because a person must file an application to make a claim for social security benefits. When a person files an application, it permits us to decide formally whether he or she (or the person for whom the application is filed) is entitled to benefits. Also, filing an application protects the right to appeal if the person is not satisfied with the decision.

This subpart does not include requirements concerning applications for black lung benefits, supplemental security income benefits or for a social security number. These rules are in Part 410, Part 416, and Part 422 of Title 20 of the Code of Federal Regulations. When we are further along with rewriting our regulations, we will consider whether combining all the application rules would be more helpful to the public.

In addition to the revisions discussed below that we made as a result of the public comments, the following changes have been made in the final regulation. First, we removed from the final regulation the provisions of Subpart G that refer to hospital insurance benefits.

Although the provisions are removed, they are not terminated and will continue to apply until new regulations are published by the Health Care Financing Administration, HEW. Additionally, we have indicated in § 404.601 that the application form and the procedures for filing a claim under Subpart G are the same as those used to establish entitlement to Medicare benefits. Second, we added to § 404.614 the provisions of Subpart G that explain the time and place for filing a written statement, request or notice, and we revised § 404.601 to reflect this change. Third, we made several editorial changes to further clarify the final regulations.

Response to Public Comments

In response to the Notice of Proposed Rulemaking, we received 44 comments: 25 from State government agencies, 13 from public and private organizations, 3 from Federal government agencies, and 3 from members of the general public. Virtually all of the comments were favorable. Several commenters, while commending the recodification effort, raised questions or made suggestions that resulted in our making a number of nonsubstantive changes in the final rules.

Discussion of Comments

1. *Further clarify retroactivity rules.* Some commenters suggested that we further clarify the rules contained in § 404.621(a) on the retroactive effect of an application filed after the first month the claimant could have been entitled to disability or old-age, survivors', or dependents' benefits. We rewrote the section to state more clearly the rule on the 12-month retroactivity of these applications and the rule limiting the retroactivity of certain applications for old-age, wife's, husband's, widow's or widower's benefits. Also, in response to these comments, we included an example to show how the rule limiting retroactivity is applied.

2. *Include rule on application by 16 to 18 year-old claimant.* A commenter noted our omission of the rule on applications by claimants between 16 and 18 years old from the proposed revision of § 404.612. The rule permits a claimant who is between 16 and 18 years old to sign an application under certain circumstances. It was not our intent to revise our policy on who may sign an application, and in response to the comment we added the rule that now appears in § 404.612(b) of the final regulation.

3. *Clarify who may sign an application.* Several commenters indicated that paragraph (f) of proposed § 404.612 was unclear. This paragraph stated that if it is necessary to protect a claimant from losing benefits and there is a valid reason for the claimant not signing an application, someone other than the persons specifically designated in the regulation could sign. In response to these comments, we revised the paragraph (now paragraph (g)) and added an example to show when the rule is used.

4. *Clarify written statement rule.* Some commenters suggested that we further explain the rule in § 404.630 about using a written statement to establish the filing date of a claim. We revised this section to explain in more detail when the filing date of a written statement indicating an intent to claim benefits will be used as the filing date of an application.

5. *Permit oral applications.* Several commenters recommended that the date of any oral inquiry be used to establish the filing date of an application. Present procedures permit us to prepare a written statement based on a telephone call and, under certain circumstances, to use this writing to establish a filing date. It was suggested that this procedure be expanded to include not only telephone calls in which the caller expresses an intent to claim benefits, but also any oral inquiry we receive at one of our offices. We have not included a provision such as this in the final regulation.

When a person visits one of our offices and wishes to claim benefits, our present policy is to encourage the filing of an application. For this reason we have not felt it necessary, as it is in the case of a telephone call, to have one of our employees prepare a written statement indicating that the person wishes to file an application. We are looking into whether this policy fully protects the rights of individuals who visit our offices and express an interest in filing for benefits. If we find that it does not, or that claimants are losing benefits because the present policy is not being followed, we will further consider implementing a procedure such as the one proposed by the commenters.

6. *Include instructional material in the regulation.* Several commenters recommended that more of the instructional material on applications now found in our Claims Manual be included in the regulation. Our objectives in recodifying Subpart G were to include in the regulations our substantive policies of general applicability and the rules we are required to publish. Additionally, we sought to avoid unnecessary regulation and excessive detail. It is our view that the Claims Manual instructions recommended for inclusion in the final regulation supplement the rules we are publishing in the **Federal Register** and that the instructions appropriately belong in our Claims Manual. For these reasons, we did not expand the final regulation as suggested by the commenters.

7. *Editorial comments.* In response to comments recommending that we use simpler language, shorter sentences, and fewer cross-references, we made a number of editorial changes in the final regulations. For example, we eliminated the terms underpayment of benefits, equitably entitled, and under a disability, in favor of simpler descriptions of what these terms mean. We also simplified the language in several sections and reviewed the use of and need for cross-references.

8. *Comments beyond the scope of the Notice.* Some comments were received that went beyond the scope of the Notice of Proposed Rulemaking or the scope of our authority. They included:

(a) Explain a period of disability for a deceased person. A period of disability is explained in our regulations on benefits in Subpart D.

(b) Revise § 404.621(c) to provide special age 72 payments for months before the month an application is filed. This is not possible under existing law.

(c) Retain the larger print used in publishing the proposed regulations in the **Federal Register** and use different colored print for headings and subheadings in the regulations. These comments and other comments that concerned changes in the format of the regulations were referred to the Office of the Federal Register (OFR) for consideration. OFR is currently exploring new formats for publishing the **Federal Register.**

The proposed regulations with these changes are adopted as shown below.

(Secs. 205 and 1102 of the Social Security Act. 53 Stat. 1368; 49 Stat. 647; 42 U.S.C. 405 and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security-Retirement Insurance; 13804 Social Security-Special Benefits for Persons Aged 72 and Over; 13805 Social Security-Survivors' Insurance.)

Dated: May 17, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 15, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart G—Filing of Applications and Other Forms

General Provisions

Sec.
404.601 Introduction.
404.602 Definitions.
404.603 You must file an application to receive benefits.

Applications

404.610 What makes an application a claim for benefits.
404.611 Filing of application with Social Security Administration.
404.612 Who may sign an application.
404.613 Evidence of authority to sign an application for another.
404.614 When an application or other form is considered filed.
404.615 Claimant must be alive when an application is filed.

Effective Filing Period of Application

404.620 Filing before the first month you meet the requirements for benefits.
404.621 Filing after the first month you meet the requirements for benefits.
404.622 Limiting an application.
404.623 Filing by persons eligible for old-age and husband's or wife's benefits.

Filing Date Based on Written Statement

404.630 Use of date of written statement as filing date.
404.631 Statements filed with the Railroad Retirement Board.
404.632 Statements filed with a hospital.

Withdrawal of Application

404.640 Withdrawal of an application.
404.641 Cancellation of a request to withdraw.

Authority: Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 647; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix.

Subpart G—Filing of Applications and Other Forms

General Provisions

§ 404.601 Introduction.

This subpart contains the Social Security Administration's rules for filing a claim for old-age, disability, dependents', and survivors' insurance benefits as described in Subpart D of Part 404. It tells what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect and how it may be withdrawn. This subpart also explains when a written statement, request, or notice will be considered filed. Since the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR Part 405, persons who wish to become entitled to Medicare benefits should refer to the provisions of this subpart. Requirements concerning applications for the black lung benefits program are contained in Part 410. Requirements concerning applications for the supplemental security income program are contained in Part 416. Part 422 contains the requirements for applying for a social security number.

§ 404.602 Definitions.

For the purpose of this subpart—

"Applicant" means the person who files an application for benefits for himself or herself or for someone else. A person who files for himself or herself is both the "applicant" and the "claimant."

"Application" refers only to an application on a form described in § 404.611.

"Benefits" means any old-age, disability, dependents', and survivors' insurance benefits described in Subpart D, including a period of disability.

"Claimant" means the person who files an application for benefits for himself or herself or the person for whom an application is filed.

"We", "us", or "our" means the Social Security Administration (SSA).

"You" or "your" means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who may consider applying for benefits.

§ 404.603 You must file an application to receive benefits.

In addition to meeting other requirements, you must file an application to become entitled to benefits. If you believe you may be entitled to benefits, you should file an application. Filing an application will—

(a) Permit a formal decision to be made on your entitlement to benefits;

(b) Protect your entitlement to any benefits that may be payable for as many as 12 months before the application was filed; and

(c) Give you the right to appeal if you are dissatisfied with the decision.

Applications

§ 404.610 What makes an application a claim for benefits.

To be considered a claim for benefits, an application must generally meet all of the following conditions:

(a) It must be on an application form as described in § 404.611.

(b) It must be completed and filed with SSA as described in § 404.611.

(c) It must be signed by the claimant or someone described in § 404.612, who may sign an application for the claimant.

(d) The claimant, with the limited exceptions in § 404.615, must be alive at the time it is filed.

§ 404.611 Filing of application with Social Security Administration.

(a) *General rule.* You must apply for benefits on one of our application forms. See Part 422, Subpart F, for a list of appropriate application forms. See also § 404.614 for places where an application for benefits may be filed.

(b) *Effect of claims filed with the Railroad Retirement Board.* An application filed with the Railroad Retirement Board on one of its forms is also considered an application for social security benefits if the application is filed—

(1) By or for a claimant who has less than 10 years of service in the railroad industry;

(2) By or for a claimant who has 10 or more years of service in the railroad industry and the applicant does not limit the application to benefits payable only under the Railroad Retirement Act; or

(3) By the spouse or by or for the child of a claimant who has worked any length of time in the railroad industry and the applicant does not limit the application to benefits payable only under the Railroad Retirement Act.

(c) *Effect of claims filed with the Veterans Administration.* An application filed with the Veterans Administration on one of its forms for survivors' dependency and indemnity compensation (see section 3005 of title 38, United States Code) is also considered an application for social security dependents' and survivors' benefits except the lump-sum death payment.

§ 404.612 Who may sign an application.

We will determine who may sign an application according to the following rules:

(a) A claimant who is 18 years old or over, mentally competent, and physically able to do so, must sign his or her own application. If the claim is for

child's benefits for a person who is not yet 22 years old, the application may be signed by a parent or a person standing in place of the parent.

(b) A claimant who is between 16 and 18 years old may sign his or her own application if he or she is mentally competent, has no court appointed representative, and is not in the care of any person.

(c) If the claimant is under age 18, or mentally incompetent, or physically unable to sign, the application may be signed by a court appointed representative or a person who is responsible for the care of the claimant, including a relative. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application.

(d) If a person who could receive disability benefits or who could have a period of disability established dies before filing, an application for disability benefits or for a period of disability may be signed by a person who would be qualified to receive any benefits due the deceased.

(e) If a person who paid burial expenses for which a lump-sum death payment may be made dies before filing an application for the payment, the application may be signed by a person who could receive the payment for the deceased's estate.

(f) If a written statement showing an intent to claim benefits is filed with us, but the person for whom the benefits are claimed dies before an application is filed, an application may be filed as explained in § 404.630(d).

(g) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not signing the application, we may accept an application signed by some one other than a person described in this section.

Example: Mr. Smith comes to a social security office a few days before the end of a month to file an application for old-age benefits for his neighbor, Mr. Jones. Mr. Jones, a 63 year old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

§ 404.613 Evidence of authority to sign an application for another.

(a) A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant. This latter information will not be requested if the application is signed by a parent for a child with whom he or she is living.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for someone else.

§ 404.614 When an application or other form is considered filed.

(a) *General rule.* An application for benefits, or a written statement, request, or notice is filed on the day it is received by an SSA employee at one of our offices or by an SSA employee who is authorized to receive it at a place other than one of our offices.

(b) *Other places and dates of filing.* We will also accept as the date of filing—

(1) The date an application for benefits, or a written statement, request or notice is received by any office of the U.S. Foreign Service or by the Veterans Administration Regional Office in the Philippines;

(2) The date an application for benefits or a written statement, request or notice is mailed to us by the U.S. mail, if using the date we receive it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, we will consider other evidence of when you mailed it to us; or

(3) The date an application for benefits is filed with the Railroad Retirement Board or the Veterans Administration. See § 404.611 (b) and (c) for an explanation of when an application for benefits filed with the Railroad Retirement Board or the Veterans Administration is considered an application for social security benefits.

§ 404.615 Claimant must be alive when an application is filed.

A claimant must be alive at the time an application is filed. There are the following exceptions to this general rule:

(a) If a disabled person dies before filing an application for disability benefits or a period of disability, a person who would be qualified to receive any benefits due the deceased may file an application. The application must be filed within 3 months after the month in which the disabled person died.

(b) If a person who paid burial expenses for which a lump-sum death payment may be made dies before filing an application for the payment, the application may be signed by a person who could receive the payment for the deceased's estate.

(c) If a written statement showing an intent to claim benefits is filed with us, but the person for whom the benefits are claimed dies before an application is filed, an application may be filed as explained in § 404.630(d).

Effective Filing Period of Application

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits (except special age 72 payments) before meeting all the requirements for entitlement, the claim will be denied unless all the requirements are met before a final decision is made on the application. If the requirements are met before that decision, we will treat your application as though it was filed in the month you first met all the requirements of entitlement.

(b) *Filing for special age 72 payments.* The requirements for entitlement to special age 72 payments must be met no later than 3 months after the month an application is filed.

§ 404.621 Filing after the first month you meet the requirements for benefits.

(a) *Filing for disability benefits and for old-age, survivors' or dependents' benefits.* (*1*) If you file an application for disability benefits, or for old-age, survivors' or dependents' benefits, after the first month you could have been entitled to them, you may receive benefits for up to 12 months immediately before the month in which you application is filed. Your benefits may begin with the first month in this 12-month period in which you meet all the requirements for entitlement. This rule has the following limitation. It is not followed if you apply for old-age, wife's, husband's, widow's or widower's benefits and the effect of the payment of

benefits for a month before the month you file would be to reduce your benefits because of your age. An explanation of the reduction that occurs because of age if you are entitled to these benefits for a month before you reach the retirement age of 65, is in § 404.410. An example of the limitation, that assumes paragraph (a)(2) of this section does not apply, follows.

Example: You become 65 years old in April 1979. If you apply for old-age benefits in April, you cannot be entitled to months in the 12-month period before April because the payment of benefits for any of these months would result in your benefits being reduced for age. If you do not file your application until July 1979, you may be entitled to benefits for the months of April, May and June 1979 because the payment of benefits for these months would not result in your benefits being reduced for age. You will not, however, receive benefits for the 9 months before April.

(2) The limitation on your entitlement to old-age, wife's, husband's, widow's or widower's benefits for months before you file an application does not apply if—

(i) You apply for old-age benefits and there are one or more persons who would be entitled to benefits as a dependent on your earnings record for past months and these benefits are not subject to reduction;

(ii) You have excess earnings in the year the application is filed and the excess earnings could be charged to months prior to the month of application. In that event, the limitation will not apply to the number of months prior to filing the application which are required to charge the excess earnings. See § 404.430 for the definition of "excess earnings" and § 404.434 for an explanation of the months to which excess earnings are charged; or

(iii) You are a widow, widower, or surviving divorced wife who is disabled and could be entitled to retroactive benefits for any month before age 60. If you could not be entitled before age 60, the limitation will prevent payment of benefits to you for past months, but it will not affect the month you become entitled to hospital insurance benefits.

(b) *Filing for lump-sum death payment.* An application for a lump-sum death payment must be filed within 2 years after the death of the person on whose earnings record the claim is filed. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to file within the 2-year period, we will consider your application as though it were filed within the 2-year period. Good cause does not exist if you were informed of the need to file an application within the 2-year period and you neglected to do so or did not desire to make a claim. Good cause will be found to exist if you did not file within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get evidence to support your claim without realizing that you could submit the evidence after filing an application; or

(iv) Unusual or unavoidable circumstances which show that you could not reasonably be expected to know of the time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing time.

(c) *Filing for special age 72 payments.* An application for special age 72 payments is not effective as a claim for benefits for any month before you actually file.

(d) *Filing for a period of disability.* You must file an application for a period of disability while you are disabled or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month time period because of a physical or mental condition, you may apply not more than 36 months after your disability ended. The general rule we use to decide whether your failure to file was due to a physical or mental condition is stated in Subpart D.

(e) *Filing after death of person eligible for disability benefits or period of disability.* If you file for disability benefits or a period of disability for another person who died before filing an application and you would qualify under § 404.503(b) to receive any benefits due the deceased, you must file an application no later than the end of the third month following the month in which the disabled person died.

§ 404.622 Limiting an application.

Your application may entitle you to benefits for up to 12 months before the month in which it is filed. See § 404.621(a). You may limit the number of months of your entitlement in the 12-month period. You may state this choice any time before a decision is made on your claim by indicating, in writing, the month you want your benefits to begin. You may change the first month of entitlement in the 12-month period after a decision has been made on your claim under the following conditions:

(a) You file the request in writing.

(b) If you are filing for the claimant, he or she is alive when the request is filed.

(c) If any other person who is entitled to benefits would lose some or all of those benefits because of the change, that person, or the person who filed for him or her, consents in writing.

(d) Any benefit payments that would become improper as a result of the change in entitlement month are repaid, or we are satisfied that they will be repaid.

§ 404.623 Filing by person eligible for old-age and husband's or wife's benefits.

(a) *Presumed filing for husband's or wife's benefits.* If you file an application for old-age benefits, you are presumed to have filed an application for husband's or wife's benefits in the first month of your entitlement to old-age benefits, if—

(1) Your old-age benefits are reduced for age because you choose to receive them before you become 65 years old; and

(2) You are eligible for either a husband's or a wife's benefit for the first month of your entitlement to old-age benefits.

(b) *Presumed filing for old-age benefits.* (1) If you file an application for husband's or a wife's benefits, you are presumed to have filed an application for old-age benefits in the first month of your entitlement to husband's or wife's benefits if—

(i) Your husband's or wife's benefits are reduced for age because you choose to receive them before you become 65 years old; and

(ii) You are eligible for old-age benefits for the first month of your entitlement to husband's or wife's benefits.

(2) The rule in paragraph (b)(1) of this section is not used if you are also entitled to disability benefits in the first month of your entitlement to husband's or wife's benefits. In this event, you are presumed to have filed for old-age benefits only if your disability benefits end before you become 65 years old.

Filing Date Based on Written Statement

§ 404.630 Use of date of written statement as filing date.

If a written statement, such as a letter, indicating your intent to claim benefits either for yourself or for another person is filed with us under the rules stated in § 404.614, we will use the filing date of the written statement as the filing date of the application, if all of the following requirements are met:

(a) The statement indicates an intent to claim benefits.

(b) The statement is signed by the claimant, the claimant's spouse, or a person described in § 404.612. If you telephone us and advise us that you intend to file a claim but cannot file an application before the end of the month, we will prepare and sign a written statement if it is necessary to prevent the loss of benefits.

(c) The claimant files an application with us on an application form as described in § 404.611, or one is filed for the claimant by a person described in § 404.612, within 6 months after the date of a notice we will send advising of the need to file an application. We will send the notice to the claimant. However, if it is clear from the information we receive that the claimant is a minor or is mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) The claimant is alive when the application is filed; or if the claimant has died after the written statement was filed, an application is filed—

(1) By or for a person who would be eligible to receive benefits on the deceased's earnings record;

(2) By a person acting for the deceased's estate; or

(3) If the statement was filed with a hospital under § 404.632, by the hospital if—

(i) No person described in paragraphs (d) (1) or (2) of this section can be located; or

(ii) A person described in paragraphs (d) (1) or (2) of this section is located but refuses or fails to file the application unless the refusal or failure to file is because it would be harmful to the deceased person or the deceased's estate.

§ 404.631 Statements filed with the Railroad Retirement Board.

A written statement filed with the Railroad Retirement Board will be considered a written statement filed with us under the rules in § 404.630 if—

(a) The statement indicates an intent to claim any payments under the Railroad Retirement Act;

(b) It bears the signature of the person filing the statement;

(c) No application is filed with the Railroad Retirement Board on one of its forms. If an application has been filed, we will use the date of filing of that application as determined by the Railroad Retirement Board (see § 404.614(b)(3)); and

(d) The statement is sent to us by the Railroad Retirement Board.

§ 404.632 Statements filed with a hospital.

A statement [generally a hospital admission form] filed with a hospital may serve as a written statement under § 404.630 if the requirements of this section are met. The statement will be considered filed with us as of the date it was filed with the hospital and will serve to protect entitlement to benefits. A statement filed with a hospital by you or some other person for you requesting or indicating an intent to claim benefits will be considered a written statement filed with us and § 404.630 will apply to it if—

(a) You are a patient in the hospital;

(b) The hospital provides services covered by hospital insurance under the Medicare program;

(c) An application has not already been filed; and

(d) The statement is sent to us.

Withdrawal of Application

§ 404.640 Withdrawal of an application.

(a) *Request for withdrawal filed before a determination is made.* An application may be withdrawn before we make a determination on it if—

(1) A written request for withdrawal is filed at a place described in § 404.614 by the claimant or a person who may sign an application for the claimant under § 404.612; and

(2) The claimant is alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if—

(1) The conditions in paragraph (a) of this section are met;

(2) Any other person who would lose benefits because of the withdrawal consents in writing to it. Written consent for the person may be given by someone who could sign an application for him or her under § 404.612; and

(3) All benefits already paid based on the application being withdrawn are repaid or we are satisfied that they will be repaid.

(c) *Effect of withdrawal.* If we approve a request to withdraw an application, the application will be considered as though it was never filed. If we disapprove a request for withdrawal, the application is treated as though the request was never filed.

§ 404.641 Cancellation of a request to withdraw.

A request to withdraw an application may be cancelled and the application reinstated if—

(a) A written request for cancellation is filed at a place described in § 404.614 by the claimant or someone who may sign an application for the claimant under § 404.612;

(b) The claimant is alive at the time the request for cancellation is filed; and

(c) For a cancellation request received after we have approved the withdrawal, the request is filed no later than 60 days after the date of the notice of approval.

[FR Doc. 79-19821 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

21 CFR Parts 74, 101, and 201

[Docket No. 77N-0009]

FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes requirements for the label declaration of FD&C Yellow No. 5 when used to color foods for human use and drugs for human use that are administered orally, nasally, vaginally, or rectally. This action is considered necessary because of mounting evidence of allergic-type reactions to FD&C Yellow No. 5. With this action, persons sensitive to FD&C Yellow No. 5 will be able to avoid those products that contain this color additive. The effective dates for this regulation will provide time for the correction of existing labels and conform with the uniform effective date for other regulations concerning the labeling of foods.

EFFECTIVE DATES: For foods: July 1, 1981; for drugs: June 26, 1980 or at the next printing of the labeling, whichever occurs first; objections by July 26, 1979.

ADDRESS: Written objections may be sent to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Foods—Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5740.

Drugs—Paul O. Fehnel, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 8, 1969 (34 FR 7447), the Food and Drug Administration (FDA) issued an order listing FD&C