Securities Act. The fact that the independent accountants' Section 11 liability does not extend to such SAS No. 24 reports should be specifically stated.

V. Authority

The rule is adopted pursuant to Section 19(a) of the Securities Act of 1933 which grants the Commission authority to define "accounting, technical and trade terms used in this title."

VI. Text of Rule

In consideration of the foregoing, 17 CFR Chapter II is amended as follows:

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding paragraphs (c) and (d) to § 230.436 as follows:

§ 230.436 Consents required in special cases.

* * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, a report on unaudited interim financial information (as defined in paragraph (d) of this section) by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term "report on unaudited interim financial information" shall mean a report which consists of the following: (1) A statement that the review of interim financial information was made in accordance with established professional standards for such reviews; (2) an identification of the interim financial information reviewed; (3) a description of the procedures for a review of interim financial information; (4) a statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and (5) a statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 28, 1979.

[FR Doc. 80-549 Filed 1-7-80; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance (1950—); Basic Computation of Benefits and Lump Sums; New Methods of Computing Benefit Amounts

AGENCY: Social Security Administration, HEW.

ACTION: Final rules.

SUMMARY: These rules state the new methods that we use to compute the basic benefits, minimum benefits, and cost-of-living increases, and to recompute the basic benefit amount. These changes are required by the Social Security Amendments of 1977. The principal purpose of the new methods is to stabilize for future beneficiaries the relationship between initial benefits and the worker's earnings. This purpose will be achieved mainly (1) by making a cost-of-living increase apply only to persons eligibile for benefits in the year of the increase and (2) by computing benefits through methods that adjust both a worker's past earnings and the brackets in the benefit formula to reflect changes in the wage levels of all wage earners. The new benefit computation methods thus provide for adjustment of benefits, earnings credits, and the benefit formula to reflect increases in cost of living or wage levels. They also reduce substantially the long-range social security deficit which resulted in large part from unintended effects of the automatic cost-of-living increase provisions of the 1972 Social Security Amendments.

EFFECTIVE DATE: These rules are effective January 8, 1980. However, in accordance with the law which these rules reflect, the new methods are effective beginning January 1, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6785.

SUPPLEMENTARY INFORMATION: On December 29, 1978, these rules were published in the **Federal Register** (43 FR 60877) as interim regulations.

Background

The automatic cost-of-living benefit increase provision of the 1972 Social Security Amendments successfully made inflation-proof the benefits of persons on the social security benefit rolls. This protection was assured by increasing benefits as the Consumer Price Index (CPI) went up. However, since 1972 the automatic benefit increase also applied to benefits which would have been payable to persons who were not yet eligible. As explained below, applying cost-of-living increases to future beneficiaries actually would have overcompensated them for inflation and resulted in a huge, unnecessary drain on the Social Security Trust Funds.

Benefits have traditionally been based on a worker's average earnings during that worker's working life, so that as the worker's earnings rise, the worker's potential future benefits also rise. Under the 1972 Amendments, benefits for future beneficiaries also increased whenever the CPI rose, and price rises far exceeded the rates expected by Congress. Thus, as wages increased to reflect price increases and as prices increased to reflect wage increases, there was an upward spiralling of benefit levels which placed a much heavier burden on the Social Security Trust Funds than was anticipated by Congress.

If the pre-1977 Amendments method for computing benefits had been retained, benefit levels would have risen by about 50 percent more than wages over the next 75 years. As a result of this rise in benefit levels, many workers would have received old-age benefits which were equal to or even greater than their wage levels when they retired. This unintended result accounted for about one-half of the long-range deficit of the trust funds.

Decoupling

The method provided in the 1977 Amendments for stabilizing the relationship between benefit levels and earnings levels is known as "decoupling." Under decoupling, cost-of-living increases will continue to apply to keep benefits inflation-proof, but only after a worker either becomes eligible for benefits, or dies before becoming eligible in the case of survivor's benefits.

Benefit Computations Based on Indexed Earnings

Along with decoupling, the future benefits of a worker not yet eligible will be protected against inflation in two

ways. One way is by adjusting or "indexing" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. The second way is by indexing the brackets in the benefit formula to reflect changes in the average wages of all workers between 1977 and the second year before the worker becomes eligible or dies. These adjusted earnings and benefit formulas, which will be computed when the worker or the worker's survivors file for benefits, will be used to compute benefit amounts. Pre-amendment computation methods would have used the worker's actual earnings, without adjustment, and cost-of-living increases were reflected in statutory tables of benefit amounts to take account of increases up to the time the beneficiaries became entitled. The 1977 Amendments provide more direct methods for computing benefits on the basis of the updated value of amounts earned in prior years.

Definition of Average of Total Wages

As provided by statute, wages are indexed by applying a ratio to the worker's earnings for each year beginning with 1951. The ratio is the "average wage" earned by all wage earners in the second year before the year of the worker's death or eligibility for benefits, divided by the "average wage" earned by all wage earners in the year of past earnings being adjusted. For instance, if a worker is credited with earnings of $4,800 for 1962, and average wage levels have doubled between then and the second year before the worker's death or eligibility for benefits, then the worker's indexed earnings for 1962, for benefit computation purposes, will be $9,600.

In the computation of average wages, individuals who worked for wages in more than one job will be counted as only one wage earner. To compute the average wage in any given year, therefore, it is necessary to know the total wages earned in that year and the total number of individuals who earned those wages.

The Congress gave the Secretary express authority to decide how to compute the average wage for each year beginning with 1951, using wages reported to the Secretary of the Treasury or his or her delegate. Average wages for 1951–1977 were published on December 29, 1978 (43 FR 61016). We determine the average wage figure as described below.

1978 and Succeeding Years

As legislative history suggests, data on total wages and total wage earners will be obtained from W–2 Forms submitted to the Internal Revenue Service (IRS) for income tax purposes. For 1978 and 1979, we will use averages derived from data on wage amounts reported on IRS Forms 1040. The number of wage earners will be derived from the W–2 Forms that are attached to those Forms 1040. (Similar data for 1977 will be obtained, so that the averages for 1978 and 1979 can be adjusted to make them comparable to the averages for 1951–1977.) Beginning with average wages for 1980, we plan to use all W–2 Forms submitted to IRS for income tax purposes. (Again, similar data for 1979 will be obtained in order to adjust average wages for 1951–1979 to the 1980 level.)

1973 through 1977

For each year, total wages and total wage earners were determined from reports of taxable wages earned during the first quarter of the year, submitted to SSA for social security tax purposes. The average wage for the first quarter of the year was multiplied by four to obtain the average wage for the year.

For years before 1977, total wages could be determined from IRS 1040 Forms, but not total wage earners. This is because IRS did not process joint returns for those years to indicate whether the husband, wife, or both earned the reported wages. Thus, the best source of data on total wages and total wage earners for these years is SSA's own records.

Total wages for the years 1973 through 1977 were determined by using taxable wages earned during the first quarter of the year rather than wages earned during the entire year. The earnings in the first quarter are considered to be more appropriate, because many wage earners reach the ceiling for reported earnings for social security tax purposes before the end of the year while relatively few reach the ceiling in the first quarter. For this reason, the first quarter earnings have also been used by SSA for other purposes under the statute, such as the determination of the contribution and benefit base, which is the maximum annual amount of earnings taxable and creditable toward benefits under social security.

1957 through 1972

Data on average taxable wages reported for all employees for the first quarter of each year before 1973 are not available on a 100-percent basis. However, beginning with 1957, such data are available from a statistical one-percent sample of social security workers containing information on wages earned during the first quarter of the year and submitted to SSA for social security purposes. As for years 1973 through 1977, the average wage for the first quarter was multiplied by four to obtain the average wage for the year.

1951 through 1956

For each year, average taxable wages were determined from a statistical 0.1% sample containing data on wages earned during the first quarter of the year and submitted to SSA for social security tax purposes. Again, as for years 1957 through 1977, the average wage for the first quarter was multiplied by four to obtain the average wage for the year.

In addition, appropriate adjustments were made so that, despite the different sources of data, the results for all years are comparable. The following are some examples of the differences in data for various periods:

(a) For years beginning with 1980, all W–2 Forms will be used, while IRS Form 1040's will be used for 1978 and 1979. The data from these two sources are expected to be different since, for example, persons with very low wages may not file a Form 1040.

(b) Forms 1040 submitted to IRS will be used for the years 1978 and 1979. W–2 Forms will be used for years after 1979. Before 1978, wage reports to SSA were used. Wages for all types of employment are reported to IRS, but before 1978, wages for some types of employment were not reported to SSA. All wages for the year are reported to IRS, but before 1978, wages were reported to SSA only up to the maximum amount taxable for social security purposes.

(c) Sampling will be used for years before 1973.

Given that similar data on total wages and total wage earners are not available for all years, it is believed that the data and the adjustments that SSA uses will produce fair and reliable results.

Publication of Wage Levels

Each year, the Secretary of Health, Education, and Welfare will publish in the **Federal Register** the current information on general wage levels that is needed to compute a person's benefit. On December 29, 1978, we published in the **Federal Register** (43 FR 61016) the average of the total wages for calendar years 1951 through 1977.

When Wage Indexing Is Effective

Wage indexing is effective for workers who after 1978 first become eligible for old-age or disability benefits or die before becoming eligible. If the wage indexing method results in a lower old-age benefit than would be payable under pre-1977 Amendments methods,

the former methods, slightly modified, may be used for persons who become eligible for an old-age benefit in the years 1979 through 1983. Modified pre-1977 Amendments methods may also be used in computing benefits for survivors of deceased workers who die after 1978 and attained age 62 in the years 1979 through 1983.

Minimum Benefit Frozen

The 1977 Amendments provide that the minimum benefit amount will be frozen at $122. That amount will then be subject to cost-of-living increases only for years in which a beneficiary is entitled to payments. Freezing the minimum benefit emphasizes the Supplemental Security Income program as a source of income for the needy. In order to provide for the needy, the minimum benefit has been increased more rapidly in the past than benefits generally. However, these increases have often resulted in somewhat of a windfall for persons who were not needy, but were receiving the minimum because they did not rely on earnings covered by social security as their primary means of support during their working lifetime.

Special Minimum Benefit Increased

The special minimum benefit, which applies to individuals who worked for many years under social security for low wages, will guarantee these workers a benefit of at least $11.50, instead of $9, for each year of coverage over 10 and up to 30. The special minimum benefit was recomputed in January 1979 for present beneficiaries to take into account this increase in the base figure from $9 to $11.50.

Cost-of-living increases will now apply to the special minimum benefit, as well.

Recomputations

Workers whose benefits were computed using wage indexing will be able to have their basic benefit recomputed if earnings after entitlement will result in a higher benefit, although the additional earnings will not be indexed.

The Final Rules

We have made some minor technical corrections and additions to the rules which were published in the interim regulations. In addition, we have added several clarifying changes as a result of comments from the public; these are discussed below. Finally, in § 404.212 through § 404.212f, we have added an introductory section and rearranged and rewritten some of the material so that it is easier to follow.

Comments on Interim Regulations

In the interim regulations, we allowed 60 days for interested persons to submit comments. We received comments from 6 people, including 4 who represent pension-consulting companies. The commenters essentially requested clarifications in certain sections of the regulations. As a result of these comments, we have made the following changes:

1. In § 404.212f, which was § 404.212b(b)(2)(iii) in the interim regulations, we indicate that benefits to survivors can be computed under the pre-1977 Amendments methods if the deceased worker attained age 62 after 1978 and before 1984. We also point out that the 1984 cut-off year does not apply to certain seldom used computation methods;

2. In § 404.212f(c), which was § 404.212b(b)(3) in the interim regulations, we have added an explanation that the modified pre-1977 Amendments method can never be used to compute disability insurance benefits, but that certain disabled individuals can choose from two methods under which they want their benefits to be computed. Accordingly, these amendments are adopted with several editorial and clarifying changes, as set forth below.

(Sections 205, 215, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended, 64 Stat. 506, as amended, 49 Stat. 647; 42 U.S.C. 405, 415, and 1302).

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social-Retirement Insurance; 13.805 Social Security-Survivors Insurance.)

Dated: October 31, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: December 31, 1979.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.203 is amended as follows: In paragraph (a), "or average indexed monthly earnings," is added after "average monthly wage"; in paragraphs (d) and (f), the period is deleted after "average monthly wage" and "or average indexed monthly earnings." is added; and paragraphs (m) and (n) are added to read as follows:

§ 404.203 Definition of terms.

* * * * *

(m) *The average of the total wages.* As used in this subpart, "the average of the total wages" (the average wage) means:

(1) For years after 1977, all remuneration reported as wages on Form W–2 to the Internal Revenue Service for all employees for income tax purposes, divided by the number of wage earners, except that for 1978 and 1979, we will use averages derived from data on wage amounts reported on IRS Forms 1040. The number of wage earners will be derived from the W–2 Forms attached to those Forms 1040. We will adjust those averages to make them comparable to the averages for 1951–1977. For years after 1977, the term includes remuneration for services not covered by social security and remuneration for covered employment in excess of that which is subject to FICA contributions.

(2) For the years 1951 through 1977, four times the amount of average taxable wages that were reported to the Social Security Administration for the first calendar quarter of each year for social security tax purposes. For years prior to 1973, these average wages are determined from a sampling of these reports.

(n) *Average indexed monthly earnings (AIME).* The "average indexed monthly earnings" (AIME) are the average of the insured individual's monthly creditable earnings in the benefit computation years, as adjusted or "indexed." The adjustment is intended to reflect increases in the average wages of all wage earners from 1951 through the second year before the year the worker dies or becomes eligible for benefits.

§ 404.205 [Amended]

2. Section 404.205 is amended by inserting after "Act," in the third sentence "from the individual's average indexed monthly earnings (§ 404.212c), from the individual's primary insurance benefit if the the individual had earnings in years before 1951 (§ 404.213),".

§ 404.207 [Amended]

3. Section 404.207 is amended by inserting after "higher" in the first sentence of paragraph (a) "or unless the wage indexing method in the Amendments of 1977 applies,".

4. Following § 404.211, new §§ 404.212, 404.212a, 404.212b, 404.212c, 404.212d, 404.212e and 404.212f are added to read as follows:

§ 404.212 Changes resulting from the Social Security Amendments of 1977.

(a) In §§ 404.212a–404.212f, we discuss the new methods for computing benefit amounts as a result of the 1977 Amendments. Section 404.212a explains how we select the proper computation method.

(b) The basic new method for computing benefit amounts under the 1977 Amendments is "wage indexing". It applies generally where an insured individual after 1978 attains age 62, becomes disabled, or dies before age 62. This method uses the worker's earnings after they have been adjusted, or "indexed", in proportion to the average increase in wages of all workers. Using this method, we determine the worker's Average Indexed Monthly Earning (AIME). (See § 404.212c.) We then compute the primary insurance amount (PIA), using the worker's AIME and also adjusting the brackets in the computation formula to reflect changes in general wage levels. (See § 404.212b). As required by law, we will publish in the **Federal Register** each year the information needed to compute the PIA under the new method. (See § 404.212d.)

(c) If the insured individual after 1978 attains age 62, becomes disabled, or dies before age 62, but was previously entitled to a disability insurance benefit, we use different methods to compute benefits. We explain these methods in § 404.212e.

(d) In certain situations where the 1977 Amendments apply, we use modified pre-1977 Amendments computations if the resulting PIA is higher than the PIA computed under the 1977 Amendments. We discuss these methods and the situations in which they apply in § 404.212a(c) and § 404.212f.

§ 404.212a Selecting the proper computation method.

(a) *When we compute benefits under the 1977 Amendments.* We compute benefits under the provisions of the Social Security Amendments of 1977 where an insured individual after 1978: (1) Attains age 62, (2) becomes disabled, or (3) dies before age 62. The computation methods under the 1977 Amendments are explained in §§ 404.212b, 404.212c and 404.212d. For exceptions to use of these methods, see paragraphs (b) and (c) of this section.

(b) *Prior entitlement to disability insurance benefits.* If an insured individual after 1978 attains age 62, becomes disabled, or dies before age 62, and was previously entitled to a disability insurance benefit, we compute benefits using the methods explained in § 404.212e.

(c) *When we use modified computations under prior law.* In certain situations we use modified pre–1977 Amendments computations, if the resulting primary insurance amount (PIA) is higher than the PIA computed under the 1977 Amendments. In general, we may use these modified methods where an insured individual attains age 62 in the years 1979 through 1983, or dies after 1978 and attained age 62 in the years 1979 through 1983. We may use these methods to compute old-age insurance benefits and related dependents' benefits and, where the individual has died, to compute survivors' benefits. We may not ordinarily use these methods to compute disability insurance benefits and related dependents' benefits. The methods used and the situations to which they apply are explained in detail in § 404.212f.

§ 404.212b Computing an individual's primary insurance amount (PIA) under the 1977 Amendments.

(a) *PIA based on the average indexed monthly earnings (AIME).* Under the 1977 Amendments, the primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. (See § 404.212c for an explanation of the AIME.)

(1) For individuals who first become eligible for old-age insurance benefits (OAIB) or disability insurance benefits (DIB) in 1979 or who die in 1979 before becoming eligible for OAIB or DIB, the PIA is computed by adding the following:

(i) 90 percent of the first $180 of the AIME;

(ii) 32 percent of the AIME over $180 and through $1,085; and

(iii) 15 percent of the AIME over $1,085.

(2) If the sum of these amounts is not a multiple of $.10, it is rounded to the next higher multiple of $.10.

(3) For individuals who after 1979 first become eligible for OAIB or DIB or die before becoming eligible, the same formula is used except that $180 and $1,085 are adjusted as explained in paragraph (b) of this section.

(4) If, after adjustment for the cost-of-living increase, the PIA based on the AIME is less than $122 (as adjusted for the cost of living), which is the minimum amount in column IV of the benefit table that was in effect in December 1978, rounded to the next higher dollar, or is less than the special minimum PIA computed for the individual (as adjusted for the cost of living), then the PIA to be used is the larger of these two minimum amounts.

(b) *Adjusting $180 and $1,085 in the PIA formula after 1979.* For an individual who after 1979 either first becomes eligible for OAIB or DIB or dies before becoming eligible, the amounts of $180 and $1,085 in paragraph (a)(1) of this section are adjusted. The adjustment updates the amounts to reflect the change in average wages of all wage earners which has occurred between 1977 and the second year before the year of first eligibility or death. This is done first by dividing the average of the total wages for the second year before the year in which the insured individual dies or first becomes eligible for benefits, by the average of the total wages for 1977 (the second year before 1979). The answer is multipled by $180 and by $1,085 to obtain the revised figures for purposes of computing the PIA. The revised figures are rounded to the nearer dollar. For example, the amount of $210.49 is rounded to $210.00; and $210.50 is rounded to $211.00.

Example. An insured worker becomes eligible for benefits in 1981. The estimated average of the total wages for 1979, the second year before the worker became eligible, is $11,494.44 and the average of the total wages for 1977 is $9,779.44. Thus, $180 and $1,085 are adjusted as follows:

$$\frac{\$11,494.44}{\$9,779.44} \times \$180 = \$212.$$

$$\frac{\$11,494.44}{\$9,779.44} \times \$1,085 = \$1,275.$$

§ 404.212c Computing an individual's average indexed monthly earnings (AIME).

(a) *General.* Earnings up to the annual wage limitation (§ 404.1027) which are recorded in the Social Security Administration's records for an individual will be the basis for computing the AIME. The amounts recorded for each year after 1950 and through the second year before the individual is first eligible for OAIB or DIB or dies will be adjusted or "indexed". Indexing reflects increases in average wages for all wage earners between the year in which the amounts were earned and the second year before the year of the individual's eligibility for benefits or death. Earnings recorded beginning with the year before death or first eligibility and for each year thereafter may be used in computing the AIME, but the individual's earnings for these years are not adjusted.

(b) *Computing the AIME.* To compute the AIME—

(1) Divide the average of the total wages (See § 404.203(m)) for the second year (1977 or later) before the earlier of the year of the insured individual's death or first eligibility for benefits, by the average of the total wages for the first computation base year. Multiply the answer by the wages and self-employment income credited to the individual (up to the annual wage limitation) for this first computation base year to obtain the adjusted earnings for that year. Then round to the nearer penny;

(2) Repeat this process for each computation base year which is subject to adjustment (see paragraph (a) of this section) to determine the adjusted earnings for each such year;

(3) Select the highest earnings (adjusted and those which could not be adjusted) for the number of years equal in number to the benefit computation years;

(4) Total these highest earnings and divide by the total number of months in the benefit computation years. The answer is the average indexed monthly earnings (AIME);

(5) If the AIME as computed is not a multiple of $1, reduce it to the next lower multiple of $1.

Example. An individual retires at age 62 in 1979. The individual earned $3,000 in 1956. The average annual wages were $3,532.36 for 1956 and $9,779.44 for 1977. The individual's indexed earnings for 1956 are computed as follows:

Average wage for second year before eligibiliby or death times individuals' earnings for year to be indexed
Average wage for year being adjusted:

$$\text{Indexed earnings} = \frac{\$9{,}779.44 \times \$3{,}000}{\$3{,}532.36} = \$8{,}305.59$$

(c) *Determining the computation base years and elapsed years.* For purposes of the AIME, computation base years and elapsed years are determined the same way as for the average monthly wage. (See § 404.211 (b) and (c)).

(d) *Determining the number of benefit computation years.* Benefit computation years are the individual's years of highest earnings selected from the computation base years. The number of an individual's benefit computation years equals the number of elapsed years reduced by five. The number of an individual's benefit computation years may not be less than two.

§ 404.212d Publication of formula for computing AIME and PIA.

Before November 2 of each year, the Secretary of Health, Education, and Welfare will publish in the Federal Register the formula for computing benefits for the next year, the formula for adjusting wages and self-employment income when computing the AIME, and the average of the total wages needed for these computations. For the average of the total wages for each calendar year after 1950 through 1977, see 43 FR 61016, December 29, 1978.

§ 404.212e Prior entitlement to disability insurance benefits (DIB).

If an insured individual after 1978 attains age 62, becomes disabled, or dies before age 62, and was previously entitled to a disability insurance benefit (DIB), we compute benefits using the following methods:

(a) If the individual was entitled to a DIB before 1979, and for any of the 12 months preceding the individual's death or current eligiblity for OAIB or DIB, we compute the PIA under the pre-1977 Amendments average monthly wage method. We will use this PIA or, if larger, the PIA computed for the individual under paragraph (b) of this section.

(b) If the individual was entitled to a DIB either before 1979 or after 1978, and for any of the 12 months preceding the individual's death or current entitlement to OAIB or DIB, the current PIA is the largest of the following:

(1) The PIA (including one computed under a pre-1977 Amendments provision) which was used in figuring the individual's previous DIB, increased by:

(i) Any general benefit increase which has occurred since the individual was last entitled; and

(ii) Any cost-of-living increase (see § 404.221) which has occurred since the individual was last entitled;

(2) $122, which is the minimum amount in column IV of the benefit table that was in effect in December 1978, rounded to the next higher dollar, plus any cost-of-living increases which have occurred since the individual was last entitled to disability benefits;

(3) The special minimum PIA (see § 404.219); or

(4) A recomputation of the former PIA to take into account earnings after the DIB entitlement ended.

(c) If the individual's entitlement to DIB ended more than 12 months before either death or current eligibility for OAIB or DIB, a new PIA will be computed under the 1977 Amendments (§§ 404.212b and 404.212c) or, if applicable, under modified pre-1977 Amendments methods (§ 404.212f). The individual's new PIA will be the higher of this newly computed PIA or the PIA that was in effect for the last month of the individual's former entitlement to DIB without regard to any interim cost-of-living increases.

§ 404.212f When we use modified pre-1977 Amendments computations.

When the conditions in paragraph (a) of this section are met, we use the computation methods in paragraph (b) of this section. We use these methods for computing OAIB and related dependents' benefits and, where the worker has died, for computing survivors' benefits. As explained in paragraph (c) of this section, we may not ordinarily use these methods to compute a DIB and related dependents' benefits.

(a) *Conditions.* We use modified pre-1977 Amendments computations if the following conditions are met—

(1) The insured individual had wages or self-employment income credited before 1979;

(2) Before 1979, the individual did not die, attain age 62, or become disabled (unless there are more than 12 months between the termination of his or her former entitlement to DIB, and his or her death or current eligibility for OAIB or DIB occurs after 1978);

(3) The individual becomes age 62 before 1984, or dies after 1978 and attained age 62 before 1984, except that the 1984 limitation does not apply to seldom-used methods that use earnings before 1951 (see §§ 404.213–404.215); and

(4) The PIA computed under the pre-1977 Amendments average monthly wage provision is higher than the PIA computed under the 1977 Amendments, including the special minimum benefit and pre-1951 earnings provisions, after adding any applicable cost-of-living increases to the computations.

(b) *Methods for other than disability insurance benefits.* Where the conditions in paragraph (a) of this section are met, we compute the PIA under the modified pre-1977 Amendments average monthly wage method, for purposes of OAIB and related dependents' benefits and, where the worker has died, for purposes of survivors' benefits. In computing the PIA, we use the benefit table in effect for December 1978 without regard to any later benefit increases which might have affected the table before the year of the worker's eligibility for OAIB or death, and without using the individual's earnings in the year of eligibility or death or any later years. If the worker has died, we use these methods even if the worker had not applied for OAIB. Thus, survivors' benefits are computed under this provision if the worker was eligible for OAIB in or before the month of death but did not apply, and if the worker attained age 62 after 1978 and before 1984.

(c) *Methods for disability insurance benefits.* We may not use the methods under paragraph (b) of this section to compute a DIB (except for the seldom-used methods described in §§ 404.213–404.215), even for an individual who attains age 62 after 1978 but before 1984 and then becomes eligible for a DIB. This individual can choose either a reduced OAIB computed under the modified pre-1977 Amendments method, or a full DIB computed under the 1977 Amendments. Under the second choice, we will automatically recompute the PIA as an OAIB, when the individual attains age 65, under the modified pre-

1977 Amendments method and pay him or her based on the method which results in the higher PIA.

5. In § 404.219, paragraphs (a) and (b)(2) are revised and paragraph (d) is added to read as follows:

§ 404.219 Special minimum primary insurance amounts (PIA).

(a) *General.* The 1972 Amendments provided for a special computation of PIA's as an alternative to the method described in § 404.209 and § 404.213. Under that provision, for monthly benefits payable after December 1972 and for lump-sum payments for deaths occurring after that month, an insured individual's PIA is equal to $8.50 multiplied by the number of the individual's "years of coverage" in excess of 10 but not more than 30. The 1973 Amendments modified this provision so that for monthly benefits payable after February 1974 and for lump-sum payments for deaths occurring after that month, an insured individual's PIA is equal to $9 multiplied by the number of the individual's "years of coverage" in excess of 10 but not more than 30. The maximum PIA under this special minimum computation is $180 for months after February 1974 ($170 for January 1973 through February 1974). These amendments did not provide any additional increase or change in this provision for months after February 1974. The 1977 Amendments further modified this provision so that, beginning January 1979, the PIA's are computed or recomputed by multiplying $11.50 times the number of the individual's "years of coverage" in excess of 10 but not more than 30, and the special minimum PIA is now subject to cost-of-living increases which apply to both current and future beneficiaries. The special minimum PIA provision applies only when it produces a PIA which is greater than the PIA determined under the average monthly wage method (§ 404.209), the indexing method (§ 404.212b), and the pre-1951 earnings method (§ 404.213), whichever applies.

(b) *Years of coverage.* In computing an insured individual's PIA under the special minimum provision described in paragraph (a) of this section, the number of the individual's "years of coverage" is equal in number to the sum of the following, up to a maximum of 30: * * *

(2) The number of "computation base years" after 1950 (see § 404.211(b)) in which the individual's creditable earnings for the year were not less than 25 percent of the maximum creditable amount for that year (see § 404.1027 and § 404.1068) as determined under provisions of section 230 of the Act as in effect before the 1977 Amendments.

* * * * *

(d) *Recomputing the special minimum primary insurance amount.* Under the 1977 Amendments, the Secretary recomputes the special minimum PIA's for all current beneficiaries by using $11.50 as the base figure by which the number of years of coverage is multiplied. The recomputed amount is effective January 1979 and is then subject to cost-of-living increases.

6. Section 404.221 is amended by changing the cross-reference in the second sentence of paragraph (a)(1) from "(see 404.231)" to "before January 1979 (see § 404.219)"; and by adding paragraphs (c), (d), and (e) to read as follows:

§ 404.221 Cost-of-living benefit increases.

* * * * *

(c) *Determining cost-of-living increases after 1978.* (1) Beginning in 1979, cost-of-living increases also apply—(i) to the special minimum benefit (see § 404.219), (ii) to all PIA's initially computed under the 1977 Amendments (including a PIA computed under a pre-1977 Amendments computation under § 404.212f) beginning with the year in which the individual becomes eligible for benefits or dies, and (iii) to the maximum family benefit.

(2) The $122 minimum benefit, which is the smallest amount in column IV in the table of benefits for December 1978 rounded to the next higher dollar, is increased, but subject to the following provisions:

(i) If an individual is entitled to an old-age benefit, the minimum PIA is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65.

(ii) If an individual is entitled to a widow's or a widower's benefit, the minimum PIA on which that benefit is based is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65. However, cost-of-living increases will apply for any year before these events if, for any month in that year, one or more individuals are entitled to a child's, mother's, or parent's benefit on the earnings record on which the widow's or widower's benefit is based.

(iii) A cost-of-living increase is not applied to a minimum PIA for any year in which no one is entitled to a benefit on the worker's earnings record for any month of that year.

(iv) If no cost-of-living increase applies to the minimum PIA in any year under the provisions of this section, the next cost-of-living increase after that year that can apply will apply to the PIA as it may have been previously increased for the cost of living.

(v) Despite the restrictions in paragraphs (c)(2)(i) through (c)(2)(iv) of this section, no PIA can be less than the one that would be computed, after adjustment for the cost of living, under the indexing method (§ 404.212b) or the special minimum benefit (§ 404.219), whichever is higher.

(d) *Effective date of increase.* The cost-of-living increase goes into effect in June of the year in which the cost-of-living computation quarter occurs, regardless of when during that year the individual becomes eligible for benefits.

(e) *Publishing cost-of-living increases after 1978.* When the Secretary determines that a cost-of-living increase is due, he or she publishes the following information in the **Federal Register** within 45 days after the close of the latest cost-of-living computation quarter:

(1) The fact that an increase is due;

(2) The percentage of the increase;

(3) A revised range of the special minimum primary insurance amounts possible after the latest cost-of-living increase;

(4) A revised range of the maximum family benefits corresponding to the special minimum PIA's possible after the latest cost-of-living increase; and

(5) A revised table which will be deemed to appear in section 215(a) of the Act (see § 404.223) for the purpose of computing benefits under the pre-1977 Amendments provisions.

7. Section 404.244 is amended by adding paragraph (b)(3) to read as follows:

§ 404.244 "Automatic" recomputation.

* * * * *

(b) *Method of recomputation.* * * *

(3) The 1977 Social Security Amendments provide that the new indexing computation method described in § 404.212b must be used to recompute the PIA for an individual who has wages or self-employment income after 1978 if the PIA was originally computed or could have been computed under the new method. The actual dollar amounts (not to be indexed) in the Social Security Administration's records for the year of entitlement and each later year will annually be compared with the earnings in the base years that were used in the last computation. Higher earnings in any year that were not used in the last

computation will be substituted for one or more years of lower earnings that were used, and the PIA will be recomputed. The $180 and the $1,085 as adjusted in the initial computation (see § 404.212b(b)) are used, without any further adjustment, each time the PIA is recomputed. The recomputed PIA will be used only if it increases the PIA by at least $1. The recomputed PIA is effective beginning with the month of death, or, for a living individual, January following the last year of higher earnings used in the recomputation. (See § 404.219 for recomputing the special minimum benefit.)

* * * * *

[FR Doc. 80-555 Filed 1-7-80; 8:45 am]
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20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance (1950-); Deductions; Reductions; and Nonpayment of Benefits Reduction of Benefits to Maximum

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These regulations implement section 202 of Pub. L. 95-216 (Social Security Amendments of 1977). They explain the new formula for determining the maximum amount of benefits that can be paid for any month based on the earnings of an insured individual who dies or becomes eligible for benefits after 1978. In these final regulations we describe when we will use this new method and how we compute the maximum benefit.

EFFECTIVE DATE: These regulations are effective January 8, 1980. However, in accordance with the law which these rules reflect, the reduction provision is effective beginning January 1, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6785.

SUPPLEMENTARY INFORMATION: On December 29, 1978, these regulations were published in the **Federal Register** (43 FR 60956) as a Notice of Proposed Rulemaking (NPRM).

The regulations implement that portion of section 202 of Pub. L. 95-216 which provides for a maximum amount that may be paid on the earnings record of an insured individual for any one month. Prior to the amendments, the maximum amounts were specific dollar amounts shown in a table in the law. The amendments substitute a formula for fixing the maximum. The formula maintains the same approximate relationship between the maximum payable on the worker's account and the worker's primary insurance amount (PIA) as under prior law.

The formula applies where the insured individual becomes eligible or dies in 1979 or later. Where the maximum applies, individual benefits are adjusted so that in general the total is not exceeded. For years after 1978, the maximum is computed by applying set percentages to dollar portions of the PIA. Thus, if an insured individual becomes eligible for benefits or dies in 1979, the monthly maximum is the total of (1) 150% of the first $230 of the individual's PIA, plus (2) 272% of the PIA over $230 but not over $332, plus (3) 134% of the PIA over $332 but not over $433, plus (4) 175% of the PIA over $433. The dollar portions will be updated each year as average earnings rise and will be applied to persons becoming eligible within the year for which the dollar portions are effective. The new dollar portions will be published in the **Federal Register** before November 2 of each year after 1978 and will be effective with the following year.

Based on the only comment we received on the NPRM, we are making a number of clarifying changes in the computation steps and we more clearly explain the rules on rounding.

We have reworded the rule on computing the maximum to show more clearly the continuity among the dollar figures in the formula. In addition, a new paragraph has been added which states how we will round off computations of maximum benefits. Further, we have added a sentence which states how we will round off computations after we have updated the dollar points in the formula.

For greater clarity and easier reading, we have provided an introductory paragraph and rearranged the rules in a more logical sequence. Accordingly, with these clarifying and editorial changes, these regulations are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance, and 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance)

Dated: July 14, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: December 31, 1979.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising § 404.403 to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) *General.* (1) The Social Security Act limits the amount of monthly benefits that can be paid for any month based on the earnings of an insured individual. If the total benefits to which all persons are entitled on one earnings record exceed a maximum amount prescribed by law, then those benefits must be reduced so that they do not exceed that maximum.

(2) The method of determining the total benefits payable (the "family maximum") depends on when the insured individual died or became eligible, whichever is earlier. For purposes of this section, the year in which the insured individual becomes eligible refers generally to the year in which the individual attains age 62 or becomes disabled. However, where eligibility or death is in 1979 or later, the year of death, attainment of age 62, or beginning of current disability does not control if the insured individual was entitled to a disability benefit within the 12 month period preceding current eligibility or death. Instead the year in which the individual became eligible for the former disability insurance benefit is the year of eligibility.

(b) *Eligibility or death before 1979.* Where more than one individual is entitled to monthly benefits for the same month on the same earnings record, a reduction in the total benefits payable for that month may be required (except in cases involving a "saving clause"—see § 404.405) if the maximum family benefit is exceeded. The maximum is exceeded if the total of the monthly benefits exceeds the amount appearing in column V of the applicable table in section 215(a) of the Act on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable. Where the maximum is exceeded, the total benefits for each month after 1964 are reduced to the amount appearing in column V. However, when any of the persons entitled to benefits on the insured individual's earnings would, except for the limitation described in

§ 404.353(d), be entitled to child's insurance benefits on the basis of the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—

(1) The sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals, or

(2) The last figure in column V of the applicable table in (or deemed to be in) section 215(a) of the Act. The "applicable" table refers to the table which is effective for the month the benefit is payable.

(c) *Eligibility or death in 1979.* If an insured individual becomes eligible or dies in 1979, the monthly maximum is as follows—

(1) 150 percent of the first $230 of the individual's primary insurance amount, plus

(2) 272 percent of the primary insurance amount over $230 but not over $332, plus

(3) 134 percent of the primary insurance amount over $332 but not over $433, plus

(4) 175 percent of the primary insurance amount over $433.

If the total of this computation is not a multiple of $0.10, it will be rounded to the next higher multiple of $0.10.

(d) *Eligibility or death after 1979.* (1) If an insured individual becomes eligible or dies after 1779, the monthly maximum is computed as in paragraph (c) of this section. However, the dollar amounts shown there will be updated each year as average earnings rise. This updating is done by first dividing the average of the total wages (see § 404.203(m)) for the second year before the individual dies or becomes eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (c) of this section. Each updated dollar amount will be rounded to the nearer dollar; if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1.

(2) Before November 2 of each calendar year after 1978, the Secretary will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(e) *Person entitled on more than one record for years after 1978.* (1) If any of the persons entitled to monthly benefits on the earnings record of an insured individual would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of—(i) the sum of the maximum amounts of benefits payable on the earnings records of all the insured individuals, or (ii) 1.75 times the highest primary insurance amount possible for that month based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year.

(2) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the others was computed under the provisions in effect after 1978, the maximum monthly benefits cannot be more than the amount computed under paragraph (e)(1) of this section.

(Sec. 203, 205, 1102, Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; (42 U.S.C. 403, 405, and 1302.))

[FR Doc. 80-554 Filed 1-7-80; 8:45 am]

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Food and Drug Administration

21 CFR Part 108

[Docket No. 75N-0332]

Emergency Permit Control, Acidified Foods; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective dates of specific enforcement provisions for exemption from, or compliance with, the emergency permit control provisions of the Federal Food, Drug, and Cosmetic Act for the production of acidified foods.

EFFECTIVE DATES: This regulation became effective May 15, 1979, except for (1) § 108.25(c)(1) (21 CFR 108.25(c)(1)), concerning registration, which became effective September 12, 1979; (2) § 108.25(c)(2), concerning process filing, which is effective 60 days after registration and before packing any new product; and (3) § 108.25(f), concerning personnel training, which becomes effective September 16, 1980.

FOR FURTHER INFORMATION CONTACT: Melvin R. Johnston, Bureau of Foods (HFF-214), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1514.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 16, 1979 (44 FR 16204), the Food and Drug Administration (FDA) published a final regulation subjecting acidified foods to regulations under section 404, the emergency permit control provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 344). The final regulation set forth requirements intended to ensure safe manufacturing, processing, and packing procedures for these foods and to permit FDA to verify that the procedures are being followed. No objections to the final regulation were received.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402, 404, 701(e), 52 Stat. 1046-1047 as amended, 1048, 70 Stat. 919 as amended (21 U.S.C. 342, 344, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), notice is given that § 108.25, as promulgated in the **Federal Register** of March 16, 1979 (44 FR 16204), became effective May 15, 1979, except for (1) § 108.25(c)(1) (21 CFR 108.25(c)(1)), concerning registration, which became effective September 12, 1979 (inadvertently stated as July 16, 1979 in the March 16 final rule); (2) § 108.25(c)(2), concerning process filing, which is effective 60 days after registration and before packing any new product; and (3) § 108.25(f), concerning personnel training which becomes effective September 16, 1980. The September 12, 1979 effective date concerning registration is in accordance with the requirements of § 108.25(c)(1).

Dated: December 28, 1979.

William F. Randolph,

Acting Associate Comissioner for Regulatory Affairs.

[FR Doc. 80-332 Filed 1-7-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 146

[Docket No. 76P-0181]

Orange Juice with Preservative and Concentrated Orange Juice with Preservative, Amendment of Standards of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date for compliance with the amended standards of identity for orange juice with preservative and concentrated orange juice with preservative that were published in the **Federal Register** of June 22, 1979 (44 FR 36377).

DATES: These regulations become effective July 1, 1981 for all affected products initially introduced into interstate commerce on or after this date.