(1978), 42 U.S.C. 6294; section 553 of the Administrative procedure Act, 5 U.S.C. 553.

Carol M. Thomas,

Secretary.

[FR Doc. 82-18926 Filed 7-13-82; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-18874]

Delegation of Authority to Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority in order to allow Regional Administrators to delay for up to six months inspections of newly registered broker-dealers that have not initiated operations during their first six months of registration. The delegation also will give Regional Administrators the option of conducting a complete examination of a broker-dealer during the first six months of its registration, or conducting only a financial and operational examination at that time, deferring the remainder of the inspection for up to six months.

EFFECTIVE DATE: July 14, 1982.

FOR FURTHER INFORMATION CONTACT: Robert A. Love, Esq., Division of Market Regulation (202-272-2781).

SUPPLEMENTARY INFORMATION: The Commission today announced the amendment, effective immediately, of its rules governing delegation of authority to the Regional Administrators (17 CFR 200.30-6) with respect to the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*, as amended). The new amendment authorizes Regional Administrators of the Commission to delay certain of the inspections of newly registered broker-dealers required pursuant to section 15(b)(2)(C) [15 U.S.C. 78o(b)(2)(C)] of the Act. This action applies only to those inspections of newly registered broker-dealers for which such responsibility has not been transferred to self-regulatory organizations ("SROs") pursuant to rule 15b2-2 (17 CFR 240.15b2-2) under the Act.

Background

Section 15(b)(2)(C) of the Act[1] requires the Commission to conduct inspections of newly registered broker-dealers, generally within six months of the date of their registration with the Commission. The section also permits the Commission to authorize and direct SROs to conduct these inspections. The Commission recently adopted rule 15b2-2, which assigns responsibility for most of these inspections to the SROs.[2] However, notwithstanding this general assignment to the SROs of the responsibility for these inspections, the Commission's regional offices remain responsible under the section for the inspections of those newly registered broker-dealers that have not become members of an SRO within the first six months of registration.[3] Unlike the SROs, however, the Commission's staff currently does not have the flexibility to delay these inspections where appropriate. Rule 15b2-2 permits SROs to postpone, until the second six months from registration, the inspection of broker-dealer members that have not yet initiated operations.[4] Further, the rule allows SROs an option of either (i) conducting a complete inspection during the first six months of registration, or (ii) conducting only a financial and operational inspection at that time, deferring the remainder of its inspection for an additional period not to exceed six months.[5]

Discussion

Today's action extends to the Commission's staff the same flexibility to delay inspections under section 15(b)(2)(C) as was previously granted to SROs with respect to their analogous inspections. In the Commission's view, the reasons previously advanced in favor of an additional period of time for certain inspections by SROs apply equally well to the Commission's inspections under section 15(b)(2)(C). *See* Securities Exchange Act Release No. 34-18556 (March 10, 1982).

For example, little can be learned from the inspection of the books and records of a broker-dealer that has not yet commenced operations. Therefore, the Commission believes that postponing until the second six months from registration inspections of broker-dealers that have not initiated operations will ordinarily result in more meaningful inspections. Similarly, sufficient records may not have been generated during the first six months of operations to permit productive inspections in areas such as sales practices. Therefore, the Regional Administrators[6] should have discretion to delay these inspections as well.

The Commission believes that the factors which support conducting inspections during the second six month period promote the purposes of the section and are in the public interest. The delegation will permit more effective use of Commission staff time and will produce inspections that are more likely to detect and prevent certain problems to which new firms are susceptible and which prompted Congress to enact section 15(b)(2)(C). Moreover, Regional Administrators and Assistant Regional Administrators for regulation are best situated to determine whether this delegation should be exercised.

Accordingly, the Commission delegates authority to the Regional Administrators to delay until the second six month period from registration with the Commission: (i) inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and (ii) inspection for applicable provisions of the Act and rules thereunder, other than financial responsibility rules.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Delegation[7]

Accordingly, the Commission revises paragraph (d) of § 200.30-6 of Title 17, Chapter II to read as follows:

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[1] Section 15(b)(2)(C) states: "Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: Provided, however, That the Commission may delay such inspection of any class of brokers or dealers for a period not exceed six months."

[2] *See* Securities Exchange Act Release Nos. 18248 (November 10, 1981), 46 FR 56426 (November 16, 1981) (proposal), and 18556 (March 10, 1982), 47 FR 11267 (March 16, 1982) (adoption), for a discussion of that action.

[3] These would generally include both those broker-dealers that have elected to join the Commission's SECO program and those that have applied to an SRO but have not yet been admitted to membership.

[4] 17 CFR 240.15b2-2(d).

[5] 17 CFR 240.15b2-2(c).

[6] The Chairman today has designated to the Assistant Regional Administrators (Regulation) authority to delay these inspections, in order to accurately reflect the functions of those staff members in the regional offices.

[7] Material pertaining to other delegations of authority is reprinted here in subparagraph (1) due to the need to renumber the items in paragraph (d).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§ 200.30-6 Delegation of authority to Regional Administrators.

* * * * *

(d) With respect to the Securities Exchange Act of 1934, 15 U.S.C. 78 et seq.:

(1) Pursuant to Rule 17a-5(a) (§ 240.17a-5(a) of this chapter) and Rule 17a-5(d) (§ 240.17a-5(d) of this chapter):

(i) To consider applications by brokers and dealers for extensions of time within which to file reports required by Rule 17a-5 (§ 240.17a-5 of this chapter) and to grant or to deny such applications: *Provided,* Such applicant is advised of his right to have such denial reviewed by the Commission; and

(ii) To grant or deny requests by brokers and dealers for the approval of a change of date for the annual audited reports required by Rule 17a-5 (§ 240.17a-5 of this chapter) where the report will not be as of a date more than 15 months from the date as of which the last preceding annual audited report was prepared: *Provided,* Such applicant is advised of his right to have such denial reviewed by the Commission.

(2) Pursuant to Section 15(b)(2)(C) of the Act (15 U.S.C. 78o(b)(2)(C)):

(i) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(ii) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Act and rules thereunder, other than financial responsibility rules.

* * * * *

Statutory Basis and Competitive Considerations

The Securities and Exchange Commission, acting pursuant to the Act, and particularly sections 2, 15 and 23 thereof (15 U.S.C. 78b, 78o and 78w), and section 1(b) of the Delegation of Functions Act, 15 U.S.C. 78d-1, hereby adopts the amendments to section 200.30-6(d). The Commission finds that there will be no burden upon competition imposed by the amendment.

The Commission also finds that the foregoing action relates solely to agency management and personnel and, accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to 15 U.S.C. 78d-1, as amended, becomes effective July 14, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

July 8, 1982.

[FR Doc. 82-19021 Filed 7-13-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-095 (Texas—20); Order No. 240]

High-Cost Gas Produced From Tight Formations; Texas

Issued: June 30, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Railroad Commission of Texas that the Monte Christo Vicksburg 9000' Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Monte Christo Vicksburg 9000' Formation, located in Hidalgo County, Texas, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was first proposed in a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation, issued February 12, 1982 (47 FR 7451, February 19, 1982),[1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703(c) that the Monte Christo Vicksburg 9000' Formation be designated as a tight formation.

On March 26, 1982, the Commission staff sent a letter to Texas, requesting clarification of the areal extent of the recommended formation, as well as of the average permeability and stabilized production rate characteristics of the Vicksburg reservoirs. On June 2, 1982, Texas submitted an amended recommendation by which it deleted certain acreage from the original recommendation. Notice of the amended recommendation was issued by the Director of the Office of Pipeline and Producer Regulation on June 4, 1982, as a Notice of Proposed Rulemaking (47 FR 25374, June 11, 1982). No comments were received in response to this notice.

Evidence submitted by Texas supports the assertion that the Monte Christo Vicksburg 9000' Formation meets the guidelines contained in § 271.703(c)(2). The Commission hereby adopts the Texas recommendation.

This amendent shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, *Code of Federal Regulations,* is amended as set forth below, effective June 30, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING

Section 271.703(d) is amended by adding a new subparagraph (91) to read as follows:

[1] Comments on the proposed rule were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(91) *Monte Christo Vicksburg 9000' Formation in Texas.* RM79–76–095 (Texas—20).

(i) *Delineation of formation.* The Monte Christo Vicksburg 9000' Formation is located in a portion of Hidalgo County, Texas, and is encountered in portions of the following surveys: Jackson Subdivision of the San Salvadore Del Tule Grant, Juan Jose Balli Survey A–290; Section 203, Tex.-Mex. Ry. Co. Survey A–124; Section 206 Tex.-Mex. Ry. Co. Survey A–637; Section 207, Tex.-Mex. Ry. Co. Survey A–126; Section 210, W. T. Bomar Survey A–624; Section 211, Tex.-Mex. Ry. Co. Survey A–128; Section 214; Macedonia Vela, Jr. Survey A–623. Excluded from the designation is a rectangular area in the Juan Jose Balli Survey A–290, two sides of which extend due north and south, the north line being 750' north of and the west line being 750' west of the Shell Oil Co, Bright & Schiff Hamman #1 Well, and the south side being 750' south of the the east line being 750' east of the Shell Oil Co. Bright & Hamman #2 Well.

(ii) *Depth.* The Monte Christo Vicksburg 9000' Formation ranges from a depth of approximately 9000 feet to approximately 9700 feet, with a gross average thickness of approximately 650 feet. The bottom of the formation may extend as deep as 10,400 feet in the undeveloped areas.

[FR Doc. 82–19201 Filed 7–13–82; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Representative Payment

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language our regulations on representative payment under titles II, Old-Age, Survivors, and Disability Insurance (OASDI), and XVI, Supplemental Security Income for the Aged, Blind, and Disabled (SSI) of the Social Security Act. These regulations (1) explain representative payment; (2) state when title II and title XVI benefits will be paid to a representative payee rather than directly to the entitled person; (3) indicate the procedure we follow in selecting a representative payee; (4) specify the responsibilities of a representative payee; and (5) clarify our responsibilities to the beneficiary when we make payments to a representative payee on his or her behalf.

DATE: These amendments are effective July 14, 1982.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7452.

SUPPLEMENTARY INFORMATION: We have rewritten and reorganized the existing regulations to make them clearer and easier for the public to use. In the process of reviewing our existing regulations, our policies in this area were also reexamined. We decided that the regulations should continue to present a set of basic guidelines for persons acting as representative payees. We also added to the regulations several of the policies we now follow in making representative rather than direct payment but which are not in the current regulations. First, we have added a provision to explain that we will give a beneficiary or the individual acting on his or her behalf advance notice before we make a determination that representative payment will be made. Second, we have added a provision to indicate that when conserved funds are held in an interest-bearing account, the interest from the account, as well as the principal, is the property of the beneficiary. Third, we have added a more complete explanation of how we select a representative payee and what we expect of him or her once the selection has been made. Fourth, we have clarified our responsibilities to a beneficiary when we select someone else to receive payments on the beneficiary's behalf. Fifth, we have added to the list of representative payee responsibilities, the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to paymnents.

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 1, 1980 at 45 FR 79501 with a 60-day comment period.

Revision and Reorganization of the Regulations

These regulations are being revised and reorganized to simplify, and improve our regulations. The regulations carry out sections 205, 1102, and 1631 of the Social Security Act.

The current regulations on representative payment of title II benefits are in Subpart U of Part 404 in Title 20 of the Code of Federal Regulations. On May 29, 1981, Subpart Q of Regulations No. 4 was redesignated as Subpart U (§§ 404.2001–2065) and a new Subpart Q, implementing section 304 (Determinations of Disability) of Pub. L. 96–265 (the Social Security Disability Amendments of 1980) was published as a final regulation at 46 FR 29190–29217. Corresponding title XVI regulations appear in Subpart F of Part 416 in Title 20.

When We Make Representative Payment

As a general rule, we pay benefits directly to the person entitled to receive them so that the person will have the full use of and control over his or her own funds. However, when we have reason to believe that a beneficiary is not able to handle the funds in his or her own interest, we investigate to determine whether benefits should be paid to someone else on his or her behalf. If we determine that a beneficiary cannot manage benefit payments in his or her own interest, we will select a representative payee and certify payments to the payee for the use and benefit of the beneficiary. Before we make this determination, we must be sure that the interests of the beneficiary will be served by our making representative rather than direct payment. Whenever we make representative payment, we certify payment to the representative payee on behalf of the beneficiary. This is to indicate that payment is being made to the representative payee as a fiduciary, and that the money is not the payee's own or for the payee's benefit, but solely for the benefit of the beneficiary. If we pay benefits to a representative payee and the representative payee misuses the benefits, we have no authority to make restitution of the misused funds and that the responsibility for restitution applies to the representative payee. (See §§ 404.2041 and 416.641.)

There are certain situations where we always make representative payment. For example, if we learn that a beneficiary has been found legally incompetent, we will name a representative payee. The payee we

select will often be the court-appointed fiduciary. However, depending upon the circumstances, we may select some other person who shows a personal as well as a financial responsibility for the beneficiary. Also, by law, we must select a representative payee to receive the Supplemental Security Income payments of a person who is eligible for benefits on the basis of a disability and who has been medically determined to be an alcoholic or a drug addict. Also, we generally name a representative payee to receive the benefits of a person under age 18.

How We Select a Representative Payee

The existing regulations describe the information we need from a person before we select him or her as a representative payee. They do not indicate, however, the preferences we use in selecting a payee. Our list of preferred payees is a guide we have prepared on the basis of our experience. It is considered along with all other factors in helping us select an appropriate payee for the beneficiary. We have included these preferences in §§ 404.2021 and 416.621.

Before We Name a Representative Payee

We have added a section to the regulations to reflect our current procedure of giving advance notice of our determination to make representative payment and to name a payee. In this notice we tell the beneficiary or the individual acting on his or her behalf that we plan to name a representative payee, indicate who the payee will be, and ask the person to contact us if he or she wishes to object to our proposed actions. If the person objects, we will review our intended decisions and consider any additional information given to us. We will then issue a determination stating the means of payment and the payee, which may be appealed under our administrative review process. The advance notice procedures are explained in §§ 404.2030 and 416.630.

Responsibilities of a Representative Payee

The existing regulations state certain responsibilities of a representative payee. These responsibilities are included in these regulations. We have added to this list the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to payments. This is contained in §§ 404.2035 and 416.635. We have also added an example in §§ 404.2045 and 416.645 to illustrate our view that moneys not needed for the beneficiary's current maintenance should be deposited in an interest-bearing account or invested on behalf of the beneficiary. We have had experience with representative payees holding funds rather than investing them. Also, in some instances the funds were invested by a representative payee, but the dividends did not accrue to the benefit of the beneficiary. Some institutions or agencies acting as a representative payee deposit funds not needed for the current maintenance of the beneficiary in an interest-bearing account, but the interest payable on the account does not accrue to the beneficiary. In §§ 404.2045 and 416.645 of the regulations, we have added a provision to clarify that the interest earned from an investment account is the property of the beneficiary, and not the property of the payee.

Changes From Current Regulations Made by the Final Rule

1. We have added a provision to explain that we will give a beneficiary or the individual acting on his or her behalf advance notice before we make a determination that representative payment will be made. (See §§ 404.2030 and 416.630.)

2. We have added a provision to indicate that when conserved funds are held in an interest-bearing account, the interest from the account, as well as the principal, is the property of the beneficiary. (See §§ 404.2045 and 416.645.)

3. We have added a more complete explanation of how we select a representative payee and what we expect of the payee once the selection has been made. (See §§ 404.2020, 404.2021, 404.2025, 404.2035, 416.620, 416.621, 416.625, and 416.635.)

4. We have revised the preference list of potential representative payees for a beneficiary age 18 or older. This list includes persons other than those specifically mentioned who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary; i.e., members of community groups or organizations who volunteer to serve as a payee for a beneficiary. This was omitted from the preference list when the NPRM was published. We have also reversed the order of the last two preferences in the preference list of potential payees for a beneficiary under age 18. These were not in proper order in the NPRM. (See §§ 404.2021 and 416.621.)

5. We have clarified our responsibilities to a beneficiary when we select someone else to receive payments on the beneficiary's behalf. (See §§ 404.2041 and 416.641.)

6. We have added to the list of representative payee responsibilities the responsibility to report to us any event which occurs that will affect the beneficiary's continued right to payments. (See §§ 404.2035 and 416.635.)

Response to Public Comments

In response to the NPRM we received 42 comments: 33 from attorneys, legal aid and social service organizations and 9 from various government employees and other members of the public.

Our objective in this recodification is to clarify the existing regulatory provisions by the use of simpler language and improved organization, so that they will be more easily understood by members of the public. Some of the comments we received were very useful in preparing the final version of the regulations. Several of the revisions discussed below were made as a result of these comments. Some of the comments were not applicable to these particular regulations. Those comments are not addressed in the preamble. Other comments are condensed, summarized or paraphrased.

For ease of comprehension and for perspective, we have grouped comments according to the subject and the issues raised. Our responses are presented in the order in which the regulations are organized.

Discussion of Public Comments Changes We Made From Notice of Proposed Rulemaking to Final

As the result of the public comments we received, we have made the following revisions in the final regulations.

1. *Emphasize that a representative payee should not be selected solely on the basis of a physical condition or limitation of the beneficiary.* We received several comments to the effect that proposed regulations would permit or require representative payment for mentally competent individuals who are physically incapable of managing their own benefits. In response to these comments we added "to direct the management of" to the last sentence of §§ 404.2001(a) and 416.601(a) to make it clear that physical disability would require representative payment only if the individual is unable to manage or to direct others in the management of benefit payments. This sentence now reads: "Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his

or her own interest." Other sections revised as a result of these comments are 404.2001(b), 404.2015, 404.2055, 416.601(b), 416.615 and 416.655. Also, §§ 404.2010(a)(2) and 416.610(a)(2) of the proposed regulations have been revised to reflect that the beneficiary is "physically incapable of managing or directing the management of his or her benefit payments."

2. *Expand when representative payment will be made on behalf of a drug addict or alcoholic.* In response to several comments that we clarify when representative payment will be made on behalf of a drug addict or alcoholic we have added a new paragraph (3) to § 416.610(a) to provide for representative payment to an individual who is "Eligible for benefits solely on the basis of a disability and who is medically determined to be a drug addict or alcoholic." This provision reflects the current law.

3. *Clarify when we will make direct payment to minor beneficiaries.* One commenter suggested that we make direct payment to a minor beneficiary whenever the beneficiary shows the ability to manage benefits or meet the appropriate State law regarding emancipation. We added to §§ 404.2010(b) and 416.610(b) examples of situations in which we make direct payment to beneficiaries under age 18. The regulations will not, however, contain all our procedures concerning direct payment to minors. These are contained in our internal procedures.

4. *Editorial changes.* Various editorial comments were received. These comments were considered and, where the review indicated inclusion of the recommended changes would improve the regulations, the appropriate changes were made.

Changes We Did Not Make

For the reasons stated below, we did not agree that the final regulations should be revised to include other changes suggested by commenters, and we did not adopt the following suggestions.

1. *Revise the advance notice procedure.* We received the following comments for improving the advance notice procedure in §§ 404.2030 and 416.630.

(a) Omit the term "generally" in subsection (a) of §§ 404.2030 and 416.630 and specifically include legally incompetent adults and minors under the advance notice procedure.

(b) Provide and oral hearing before a representative payee is named.

(c) Explain when the advance notice is not sent.

(d) Have the advance notice reflect a specific time frame within which to protest.

(e) Identify what is to be included in the advance notice.

(f) Provide advance notice if we are continuing payment to the original representative payee at the time of reinstatement of benefits after a successful appeal or long-term suspension.

As noted, these comments are not being adopted. Sections 404.2030 and 416.630 provide to whom advance notice is sent and what is included in the advance notice. We have not provided for an oral hearing or face-to-face interview. If the beneficiary or his or her representative does, in fact, protest the proposed determinations, we will provide him or her with an opportuntiy to meet with us and to examine the evidence (as appropriate under part 401 of the regulations, disclosure procedures) before the decisions are formally rendered.

The term "generally" has been retained because exceptions to the advance notice procedure are more appropriately discussed in our operating procedures and not the regulations. In addition, information pertaining to when advance notice is not sent and the specific time frame within which to protest the payee recommendation, is also contained in our operating procedures.

Also, our current instructions provide the beneficiary with an opportunity to contest a continued appointment at the time of reinstatement of the beneficiary's benefits after a successful appeal or long-term suspension.

2. *Provide a face-to-face meeting to determine the capability of a beneficiary.* One commenter suggested we provide a face-to-face meeting to determine a beneficiary's capability. There is an opportunity for a face-to-face meeting discussed in our procedural instructions. Since we consider that procedure one of many operational details of our basic policy, we have not included it in the regulations. Generally, we believe only basic policy should be covered in the regulations.

3. *Personal needs of the beneficiary.* We received several comments that §§ 404.2040(b) and 416.640(b) of the proposed regulations should be changed to reflect that a beneficiary's personal needs over and above the expenses incurred for his or her basic needs (room, board, and nursing care) may be paid from the beneficiary's funds only after the beneficiary's obligations to pay for his or her basic needs have been met. Also, we received comments that the beneficiary's Medicaid eligibility and payment for covered services to an institutionalized individual would cease if the patient's representative payee does not pay the patient's share of liability for a medical vendor payment.

Benefits certified to a representative payee are considered to be used in a beneficiary's best interests if they are used for a beneficiary's current maintenance. Since clothing and personal comfort items are considered costs incurred for current maintenance, we have not added this statement.

Although we provide guidelines as to what is in the beneficiary's best interests, there is a considerable amount of discretion provided the payee. If satisfying the beneficiary's significant personal needs before paying his or her institutional charges is in the beneficiary's best interests, then the payee is performing appropriately.

Finally, Medicaid eligibility and payment for covered services to an institutionalized individual does not cease if the patient or that patient's representative payee does not pay the patient's share of liability for a medical vendor payment. While title XIX policy requires that all patient income in excess of the personal needs allowance be considered as the patient's share of liability when computing the medical vendor payment amount, it does not mandate that the amount of the patient's liability actually be paid as a condition of eligibility. If the patient's liability is not paid, there is no change in Medicaid status. It is a matter between the patient (or representative payee) and the Medicaid facility. In fact, there is no such requirement in the Medicaid law or regulations and the States are not permitted to impose one.

4. *Payment of a beneficiary's debt.* We received three comments that §§ 404.2040(d) and 416.640(d) of the proposed regulations should be amended to reflect that if funds are available, a payee is required to satisfy a debt of the beneficiary for basic needs even if the debt arose before the first month for which payments were certified to the payee. A payee is authorized and directed to apply benefits for the use and benefit of the beneficiary. While the payee has the authority to determine how and for what purpose the benefits are to be used for the beneficiary, the payee is required to use them in a manner that serves the beneficiary's best interests.

Whenever there is a use of legal process to compel payment of a past indebtedness which jeopardizes the beneficiary's current maintenance, including the satisfaction of his or her

reasonably foreseeable future needs, it is the representative payee's responsibility to invoke, on the beneficiary's behalf, the protection of section 207 of the Act. (Section 207 exempts benefits, either before or after payment, from execution, levy, attachment, garnishment, or other seizure by creditors so long as payments are identifiable.) A representative payee may, however, use benefits to discharge a valid, properly authenticated past indebtedness of the beneficiary provided the amount required to discharge such a past indebtedness is not necessary for the beneficiary's current maintenance, including his or her reasonably foreseeable future needs.

5. *Make the Social Security Administration liable for the misuse of benefit payments.* Several commenters suggested that §§ 404.2041 and 416.641 of the proposed regulations be revised to make us, as well as the representative payee, liable for misuse. We have no authority to assume liability for misuse.

It was also suggested that misuse should be an appealable determination and that we have a more affirmative role in attempting to recover misused funds. We are examining our policies with regard to the misuse of benefits and to recoupment generally. Any changes to current policy resulting from our study will be the subject of separate regulations.

6. *Eliminate examples specifying an amount which requires deposit in an interest-bearing account.* A number of commenters recommended that the examples in §§ 404.2045(a) and 416.645(a) of the proposed regulations be deleted since they specify an amount that requires depositing funds in an interest-bearing account and this requirement has not yet become part of a published regulation. We have determined that a monetary figure should be placed in the regulations for depositing funds in an interest-bearing account and that $150 would be a reasonable money amount.

7. *Require mandatory accountings.* Several commenters suggested that we require regulatory scheduled mandatory accounting. Under the regulations, we may require such accounting. However, we are reviewing our present accounting and verification process. As a result of our findings, we may make changes in the accounting requirements. If any changes are made they will be the subject of separate regulations.

8. *Liability for overpayment.* We received a comment suggesting that the regulations should specify whether the beneficiary and/or the representative payee are jointly or severally liable for an overpayment. Liability for overpayment is discussed in the Social Security Rulings (SSR 64–7). This ruling indicates that where a representative payee receives an overpayment on behalf of a beneficiary, the payee and the beneficiary may, under certain circumstances, be jointly and individually liable for the overpayment. However, the payee is not liable if he or she used the amounts received for the benefit of the beneficiary and was without fault with regard to the overpayment.

9. *Discuss situations in which the beneficiary objects to the appointment of a representative payee.* One commenter recommended that the regulations should discuss situations in which the beneficiary objects to the appointment of a specific representative payee but we appoint the payee over protest. Such a discussion would make the regulations unnecessarily lengthy. Furthermore, the payee determination is an appealable determination. The appeals process is discussed in Regulations No. 4, Subpart J and Regulations No. 16, Subpart N.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—The reporting/recordkeeping requirements in the sections of these regulations cited below are subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and therefore require Office of Management and Budget (OMB) approval. These requirements are presently approved by OMB under the OMB approval numbers cited.

Regulation section	OMB approval No.
404.2025(a)	0960-0014.
416.625(a)	
404.2035(b)	0960-0073.
404.2035(c)	0960-0012.
416.635(c)	
404.2065	0960-0068 (Individual). 0960-0069 (Institution).
416.635(b)	0960-0128.
416.665	0960-0135.

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—Since a notice of proposed rulemaking for these rules was issued before January 1, 1981, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

These amendments are hereby adopted and set forth below.

(Catalog of Federal Domestic Assistance Program, Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

Dated: May 17, 1982.

Paul B. Simmons,

Acting Commissioner of Social Security.

Approved: June 24, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

* * * * *

Subpart U—Representative Payment

Sec.

Authority: Sec. 205 and 1102 of the Social Security Act; 53 Stat. 1368, 49 Stat. 647; 72 U.S.C. 405 and 1302.

Subpart U—Representative Payment

§ 404.2001 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 404.2010 When payment will be made to representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payments to a beneficiary under age 18 if the beneficiary is—

(1) Receiving disability insurance benefits on his or her own Social Security earnings record; or

(2) Serving in the military services; or

(3) Living alone and supporting himself or herself; or

(4) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(5) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(6) Within 4 months of attaining age 18 and is initially filing an application for benefits.

§ 404.2015 Information considered in determining whether to make representative payments.

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination, if it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is able to manage or direct the management of benefit payments.

§ 404.2020 Information considered in selecting a representative payee.

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—

(a) The relationship of the person to the beneficiary;

(b) The amount of interest that the person shows in the beneficiary;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

§ 404.2021 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

(a) For beneficiaries 18 years old or older, our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An unauthorized social agency or custodial institution.

§ 404.2025 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 404.2030 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 404.2035 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 404.2040 Use of benefit payments.

(a) *Current maintenance.* We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of $400. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	$200
Medical	25
Food	60
Clothing (coat)	55
Savings	30
Miscellaneous	30

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institutional care.* If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

Example: An institutionalized beneficiary is entitled to a monthly Social Security benefit of $320. The institution charges $700 a month for room and board. The beneficiary's brother, who is the payee, learns the beneficiary needs new shoes and does not have any funds to purchase miscellaneous items at the institution's canteen.

The payee takes his brother to town and buys him a pair of shoes for $29. He also takes the beneficiary to see a movie which costs $3. When they return to the institution, the payee gives his brother $3 to be used at the canteen.

Although the payee normally withholds only $25 a month from Social Security benefit for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution $10 less than he usually pays.

The above expenditures represent what we would consider to be proper expenditures for current maintenance.

(c) *Support of legal dependents.* If the current maintenance needs of the beneficiary are met, the payee may use part of the payments for the support of the beneficiary's legally dependent spouse, child, and/or parent.

Example: A disabled beneficiary receives a Veterans Administration (VA) benefit of $325 and a Social Security benefit of $525. The beneficiary resides in a VA hospital and his VA benefits are sufficient to provide for all of his needs; i.e., cost of care and personal needs. The beneficiary's legal dependents—his wife and two children—have a total income of $250 per month in Social Security benefits. However, they have expenses of approximately $450 per month.

Because the VA benefits are sufficient to meet the beneficiary's needs, it would be appropriate to use part of his Social Security benefits to support his dependents.

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A retroactive Social Security check in the amount of $1,640, representing benefits due for July 1980 through January 1981, was issued on behalf of the beneficiary to the beneficiary's aunt who is the representative payee. The check was certified in February 1981.

The nursing home, where the beneficiary resides, submitted a bill for $1,139 to the payee for maintenance expenses the beneficiary incurred during the period from June 1980 through November 1980. (Maintenance charges for December 1980 through February 1981 had previously been paid.)

Because the benefits were not required for the beneficiary's current maintenance, the payee had previously saved over $500 for the beneficiary and the beneficiary had no foreseeable needs which would require large disbursements, the expenditure for the maintenance charges would be consistent with our guidelines.

§404.2041 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee in his or her personal capacity, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 404.2045 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs or the support of legal dependents, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several Social Security beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the current support and maintenance of the beneficiaries as well as for miscellaneous needs the beneficiaries may have. Several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

———— (Name of beneficiary)
———— (Social Security Number), for whom ——— (Name of payee) is representative payee for Social Security benefits;

(2) For interest or dividend paying accounts—

———— (Name of beneficiary) by ———— (Name of payee), representative payee.

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 404.2050 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

(a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;

(b) Has not carried out the other responsibilities described in this subpart;

(c) Dies;

(d) No longer wishes to be payee;

(e) Is unable to manage the benefit payments; or

(f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 404.2055 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee or to use, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

§ 404.2065 Accounting for benefit payments.

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) How the benefit payments were used;

(c) How much of the benefit payments were saved and how the savings were invested;

(d) Where the beneficiary lived during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

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

2. Subpart F of Part 416 is revised to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * *

Subpart F—Representative Payment

Sec.

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 49 Stat. 647; 86 Stat. 1475; 42 U.S.C. 1302 and 1383 (a)(2) and (d)(1).

Subpart F—Representative Payment

§ 416.601 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her own interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee. However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of disability and who is medically determined to be a drug addict or an alcoholic.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 416.610 When payment will be made to a representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments; or

(3) Eligible for benefits solely on the basis of a disability and who is medically determined to be a drug addict or alcoholic.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payment to a beneficiary under age 18 if the beneficiary is—

(1) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(2) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(3) Within 4 months of attaining age 18 and is initially filing an application for benefits.

§ 416.615 Information considered in determining whether to make representative payment.

In determining whether to make representative payment we consider the following information:

(a) *Court determinations.* If we learn that a beneficiary has been found to be legally incompetent, a certified copy of the court's determination will be the basis of our determination to make representative payment.

(b) *Medical evidence.* When available, we will use medical evidence to determine if a beneficiary is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the beneficiary and his or her knowledge of the beneficiary's present condition will be used in our determination, if it includes information concerning the nature of the beneficiary's illness, the beneficiary's chances for recovery and the opinion of the physician or other medical professional as to whether the beneficiary is able to manage or direct the management of benefit payments.

(c) *Other evidence.* We will also consider any statements of relatives, friends and other people in a position to know and observe the beneficiary, which contain information helpful to us in deciding whether the beneficiary is able to manage or direct the management of benefit payments.

§ 416.620 Information considered in selecting a representative payee.

In selecting a payee we try to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making our selection we consider—

(a) The relationship of the person to the beneficiary;

(b) The amount of interest that the person shows in the beneficiary;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(d) Whether the potential payee has custody of the beneficiary; and

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

§ 416.621 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interests. The preferences are:

(a) For beneficiaries 18 years old or older our preference is—

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities

of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

§ 416.625 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 416.630 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 416.635 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits (See Subpart G of this Part concerning these reporting requirements);

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 416.640 Use of benefit payments.

(a) *Current maintenance.* We will consider that payments we certify to a representive payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

Example: A Supplemental Security Income beneficiary is entitled to a monthly benefit of $264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner:

Rent and Utilities	$166
Medical	20
Food	60
Clothing	10
Miscellaneous	8

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institution not receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is receiving care in a Federal, State or private institution because of mental or physical incapacity, current maintenance includes the customary charges for care and services provided by the institution, and expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution. Any payments remaining may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over six years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board.

The beneficiary's payee pays the boarding home $215 and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) *Institution receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is in an institution throughout a month and the institution receives Medicaid funds on behalf of the beneficiary, any payments due shall be used only for the personal needs of the beneficiary, and not for current maintenance.

Example: A disabled beneficiary resides in a psychiatric hospital. The superintendent of the hospital receives $25 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner which would be consistent with our guidelines:

Miscellaneous canteen items	$9
Clothing	11
Conserved for future needs of the beneficiary	5

(d) *Claims of creditors.* A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A disabled beneficiary was determined to be eligible for a monthly benefit payment of $208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved $27 of the benefits received. In

June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for $175.

After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately $180 a month is required for the beneficiary's current monthly living expenses—rent, utilities, food, and insurance—and the beneficiary will need new shoes and a coat within the next few months.)

Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

§ 416.641 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee personally, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 416.645 Conservation and investment of benefit payments.

(a) *General.* If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the personal needs of the beneficiaries. However, not all those funds were disbursed for this purpose. As a result, several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) *Preferred investments.* Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

———— (Name of beneficiary) ——— (Social Security Number), for whom ———— (Name of payee) is representative payee for Supplemental Security Income benefits;

(2) For interest or dividend paying accounts—

———— (Name of beneficiary) by ———— (Name of payee), representative payee.

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 416.650 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

(a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;

(b) Has not carried out the other responsibilities described in this subpart;

(c) Dies;

(d) No longer wishes to be payee;

(e) Is unable to manage the benefit payments; or

(f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 416.655 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 416.660 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee, or to us, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

§ 416.665 Accounting for benefit payments.

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) How the benefit payments were used;

(c) How much of the benefit payments were saved and how the savings were invested;

(d) Where the beneficiary lived during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

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ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5322/R113; PH-FRL 2169-6]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.