Federal Register
Vol. 49, No. 114
Tuesday, June 12, 1984

# Presidential Documents

Title 3—

The President

**Presidential Determination No. 84–9 of May 31, 1984**

## Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic, the People's Republic of China and the Socialist Republic of Romania will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, May 31, 1984.*

[FR Doc. 84–15819
Filed 6–8–84; 12:30 pm]
Billing code 3195–01–M

# Rules and Regulations

Federal Register
Vol. 49, No. 114
Tuesday, June 12, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 928

[Hawaiian Papaya Reg. 13]

### Papayas Grown in Hawaii; Grade Requirement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule requires that fresh papayas shipped to markets outside Hawaii grade at least Hawaii No. 1, effective July 1, 1984. This requirement is designed to promote the marketing of fresh papayas of suitable quality in the interest of producers and consumers.

**EFFECTIVE DATE:** July 1, 1984. Comments due by July 12, 1984. The Director of the Federal Register approves the incorporation by reference of Hawaiian papaya grade standards in 7 CFR Part 928.313.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

**SUPPLEMENTARY INFORMATION:** This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Under the papaya grade regulation, export shipments of fresh papayas will be subject to a minimum grade requirement of Hawaii No. 1, with specified additional allowances for certain defects and exemption from weight requirements of the grade. Also shipments of immature papayas would be exempt from regulation under § 928.152 if handled for special purposes (e.g. cooking). The grade regulation for Hawaiian papayas would be the first issued since the 1981 season. Since that time Hawaiian papaya crops have been affected by adverse weather conditions which have rendered regulation unnecessary. The grade requirement is based upon the recommendations and information submitted by the Papaya Administrative Committee, and upon other available information.

Total Hawaiian papaya production for the 1984 season is forecast at 90,000,000 pounds, two-thirds more than in 1983, and 40 percent more than the record in 1978. Of this total, an estimated 60,000,000 pounds of papayas will be shipped fresh in 1984 to export markets primarily in the continental United States, Canada, and Japan, compared with 35,000,000 pounds in 1983. Fresh shipments within Hawaii are estimated at 15,000,000 pounds, and the amount utilized in processing at 15,000,000 pounds, for the 1984 season. Hawaiian fresh papaya production for the first 4 months of 1984 amounted to 21,860,000 pounds, up considerably from the 11,130,000 pounds produced during the same period in 1983. Papaya production for August 1984 is forecast at a record 7,000,000 pounds, up considerably from the 3,447,000 produced in August 1983. Papayas failing to meet the grade requirement could be disposed of in unregulated outlets, such as the fresh market within the State of Hawaii, and the processed products market. In view of the anticipated continued heavy shipments to the export markets in 1983, establishment of the minimum grade requirement would provide for orderly marketing of the Hawaiian papaya crop.

The purpose of the grade requirement is to promote orderly marketing conditions and protect grower returns by preventing the shipment of poor quality papayas. Shipment of low quality papayas tends to disrupt orderly marketing, and depress prices of all papayas since the presence of low quality fruit undermines consumer confidence in the quality of all fruit sold in the market and discourages repeat purchases. The regulation is necessary to assure shipment of papayas of acceptable quality and promote orderly marketing.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this interim final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the Act. Shipments of Hawaiian papayas are currently in progress. Interested persons were given an opportunity to submit information and views on the grade requirement for 1984 season Hawaiian papayas at an open meeting at which the committee without opposition recommended implementation of the requirements for Hawaiian papayas specified in this rule. Hawaiian papaya handlers have been apprised of the provisions and effective date of the Hawaiian papaya regulation. The interim final rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need to be received within 30 days, so that any necessary changes can be made promptly in the grade requirement. All comments received will be considered prior to finalization of this rule. It is found that this rule will tend to effectuate the declared policy of the Act.

### List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii, Incorporation by reference.

## PART 928—[AMENDED]

Therefore, a new § 928.313 is added reading as follows:

### § 928.313 Hawaiian Papaya Regulation 13.

(a) On and after July 1, 1984, no handler shall ship any container of

papayas to any export destination (except immature papayas handled pursuant to § 928.152) unless such papayas grade at least Hawaii No. 1: *Provided*, That not more than 3 percent shall be immature fruit: *Provided further*, That the weight requirements specifed in this grade shall not apply to such shipments.

(b) "Hawaii No. 1" cited in this regulation is specified in the Hawaii Department of Agriculture Standards for Fruits and Vegetables (Title 4, Subtitle 4, Chapter 41, Subchapter 7, § 4–41–52) (5/29/81). Copies of the grade specifications are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975, and they are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. The materials are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the **Federal Register**.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 7, 1984.

**Thomas R. Clark,**

*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 84–15738 Filed 6–11–84; 8:45 am]

BILLING CODE 3410–02–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### Abolition of the Position of Appeal Panel Vice Chairman

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to abolish the position of permanent Vice Chairman of the Atomic Safety and Licensing Appeal Panel and to authorize the most senior available full-time Appeal Panel member to perform certain functions previously performed by the Vice Chairman. Specifically, these amendments will authorize such Appeal Panel member to assign members of the Panel to serve as members of an Atomic Safety and Licensing Appeal Board for a particular proceeding if the permanent Chairman of the Panel is not available to make the assignment. The amendments will also authorize the most senior available full-time Appeal Panel member to act for an Appeal Board on procedural matters in specified circumstances.

**EFFECTIVE DATE:** June 12, 1984.

**FOR FURTHER INFORMATION CONTACT:** Linda S. Gilbert, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–7678.

**SUPPLEMENTARY INFORMATION:** Under § 2.787 of the Commission's rules of practice, the permanent Vice Chairman of the Atomic Safety and Licensing Appeal Panel is assigned certain administrative and procedural duties in specified circumstances. The Commission has decided to abolish the position of permanent Vice Chairman of the Appeal Panel. In connection with this action, the Commission is amending § 2.787 to authorize the most senior available full-time Appeal Panel member, based on the date of appointment as a member of the Panel, to perform those functions previously performed by the Vice Chairman under that section.

Section 2.787(a) governs the assignment of Appeal Panel members to serve on three-member Appeal Boards for particular proceedings. Among other things, it provides that the permanent Chairman of the Appeal Panel shall make such assignments. In the absence of the Chairman, the permanent Vice Chairman of the Appeal Panel shall perform this function. The section has been amended to provide that, in the absence of the Chairman, the most senior available full-time member of the Appeal Panel shall assign Panel members to serve on particular Appeal Boards.

Section 2.787(b) sets forth the persons who are authorized to act for an Appeal Board on procedural matters, including requests for stays of orders of presiding officers, in the absence of a quorum. They are, in order of preference: (1) the Chairman of the Appeal Board assigned for the particular proceeding, (2) the permanent Chairman of the Appeal Panel, or (3) the permanent Vice Chairman of the Appeal Panel. Section 2.787(b)(3) has been amended to substitute the most senior available full-time Appeal Panel member for the permanent Vice Chairman of the Appeal Panel.

The language of § 2.787(b)(3) has also been revised to clarify when the most senior available full-time Appeal Panel member is authorized to act for an Appeal Board on procedural matters. Specifically, the following two conditions must be met: (1) the Chairman of the particular Appeal Board must be unavailable or the position must not yet be assigned, and (2) the permanent Chairman of the Appeal Panel must be unavailable or the position must be vacant.

These amendments relate solely to minor matters of agency management and do not themselves alter the rights or interests of parties or licensees. Accordingly, the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553, are inapplicable and the amendments may be made effective on publication in the **Federal Register**.

### Paperwork Reduction Act Statement

The information collection requirements contained in this final rule are exempt from the Paperwork Reduction Act of 1980 (44 U.S.C. 3518(c)(1)).

### List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

The authority citation for this document is:

(Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201))

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552, 553, the NRC is adopting the following amendments to 10 CFR Part 2.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Section 2.787 is revised to read as follows:

**§ 2.787 Composition of Atomic Safety and Licensing Appeal Boards.**

(a) An Atomic Safety and Licensing Appeal Board is composed of three members, possessing qualifications deemed appropriate to the issues to be decided, assigned for each proceeding from the Atomic Safety and Licensing Appeal Panel. Members shall be assigned by the permanent Chairman of the Panel or, in his or her absence, by the most senior available full-time member of the Appeal Panel. For purposes of this section, seniority will be determined according to the date of appointment as a member of the Atomic Safety and Licensing Appeal Panel. The Chairman of an Appeal Board for a

particular proceeding shall be qualified in the conduct of administrative proceedings. An alternate may be assigned to serve as a member of an Atomic Safety and Licensing Appeal Board for a particular proceeding in the event that a member asigned to such proceeding becomes unavailable.

(b) In the absence of a quorum, the following individuals are authorized to act for an Appeal Board on procedural matters, including requests for stays of orders by presiding officers:

(1) The Chairman of the Appeal Board assigned for a particular proceeding;

(2) The permanent Chairman of the Atomic Safety and Licensing Appeal Panel, in the event that the Chairman for a particular proceeding is not available to act upon the matter in question, or has not been assigned.

(3) The most senior available full-time member of the Appeal Panel, in the event that (i) the Chairman for a particular proceeding is unavailable or has not been assigned, and (ii) the permanent Chairman of the Appeal Panel is unavailable or the position is vacant.

(c)(1) Except with respect to requests for stays of orders of presiding officers, action by a designated individual under the authority of paragraph (b) of this section shall be reviewable by the Appeal Board for the particular proceeding, upon its own motion or upon a motion filed within three (3) days of the date of the particular action in accordance with § 2.730.

(2) Action under the authority of paragraph (b) of this section with respect to requests for stays of orders of presiding officers shall be reviewable by the Commission, upon its own motion or upon a motion filed within three (3) days of the date of the particular action in accordance with § 2.730.

Dated at Washington, D.C., this 6th day of June 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 84-15733 Filed 6-11-84; 8:45 am]

BILLING CODE 7590-01-M

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**10 CFR Parts 2 and 50**

## Financial Qualifications Statement of Policy

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** In response to the issuance of the mandate of the U.S. Court of Appeals for the D.C. Circuit in *New England Coalition on Nuclear Pollution* v. *NRC*, 727 F.2d 1127 (D.C. Cir. 1984), the Nuclear Regulatory Commission issues a statement of policy clarifying its response to the Court's remand.

**FOR FURTHER INFORMATION CONTACT:** Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; phone (202) 634-1493.

**SUPPLEMENTARY INFORMATION:** On February 7, 1984, the U.S. Court of Appeals for the District of Columbia Circuit granted a petition for review by the New England Coalition on Nuclear Pollution (NECNP) which challenged the Commission's March 31, 1982, rule eliminating case-by-case financial qualification review requirements for electric utilities. *New England Coalition on Nuclear Pollution* v. *NRC*, 727 F.2d 1127 (D.C. Cir. 1984). The Court found that the rule was not adequately supported by its accompanying statement of basis and purpose and remanded to the agency, but did not explicitly vacate the rule.

In response to ths decision, the Commission initiated a new financial qualification rulemaking to clarify its position on financial qualification reviews for electric utilities. 49 FR 13044 (1984). One of the points focused upon in the Court's decision was the Commission's observation in the Statement of Considerations for the March 31, 1982 rule that utilities encountering financial difficulties in the past *during construction* have chosen to abandon or postpone projects rather than cut corners or safety. The Court believed that such actions by some utilities do not guarantee that all financially troubled utilities would follow the same course. The revised proposed rule would eliminate financial review only at the operating license stage. The question of reasonable assurance of adequate construction funding can be an issue only at the construction permit stage. Thus, the Commission's current rulemaking is responsive to the Court's concern by maintaining the financial qualifications review for construction permit applicants.

The Court was also troubled by what it perceived to be an inconsistency between elimination of the review only for electric utilities and the Commission's observation that financial qualifications reviews are unnecessary because it finds no link between financial qualifications and safety. This observation is not relied on in the new proposed rule. Instead, the rule is premised on the assumption that, at the operating license level, regulated utilities will be able to cover the costs of operation through the ratemaking process.

In the interim, the Court's mandate has issued. The mandate contained no guidance other than that furnished in the Court's opinion. The Commission has concluded that the issuance of the mandate does not have the effect of restoring the previous regulation under which financial qualification review was required as a prerequisite for a reactor construction permit or operating license. In remanding the rule to the Commission without explicitly vacating the rule, the Court cited *Williams* v. *Washington Metropolitan Area Transit Commission*, 415 F.2d 922 (D.C. Cir. 1968) (*en banc*), *cert. denied* 393 U.S. 1081 (1969). *Williams* does not require that the agency action be vacated on remand. In another situation where the D.C. Circuit remanded a set of rules to an agency for an adequate statement of basis and purpose, the Court allowed the old rules to stand pending agency action to comply with the Court's mandate. *Rodway* v. *United States Department of Agriculture*, 514 F.2d 809 (D.C. Cir. 1975). The Commission is complying with the Court's mandate by repromulgating its financial qualifications rule in a manner responsive to the Court's concern. The Commission anticipates that the new rule eliminating financial review at the operating license stage only will soon be in place. While there are no construction permits proceedings now in progress, there are several ongoing operating license proceedings to which the new rule will apply. It would not appear reasonable to construe the Court's opinion as requiring that the Commission instruct its adjudicatory panels in these proceedings to begin the process of accepting and litigating financial qualifications contentions, a process which would delay the licensing of several plants which are at or near completion, only to be required to dismiss the contentions when the new rule takes effect in the near future.

Accordingly, the March 31, 1982 rule will continue in effect until finalization of the Commission's response to the Court's remand. The Commission directs its Atomic Safety and Licensing Board Panel and Atomic Safety and Licensing Appeal Panel to proceed accordingly.

Commissioner Gilinsky did not participate in this decision. Commissioner Asselstine's dissent from this decision and the separate views of Chairman Palladino and Commissioners Roberts and Bernthal follow.

**Separate Statement of Chairman Palladino**

The Court of Appeals remanded the financial qualifications rule to the Commission. The Commission promptly initiated rulemaking to address the deficiencies identified by the Court. It then faced the question of what to do about financial qualifications in pending operating license cases. The Court's opinion did not say that the rule was "vacated." Thus, the Commission was presented with a question of interpretation of the Court's opinion. The Commission adopted the view that the Court's opinion could reasonably be interpreted as not vacating the rule for operating license reviews.

The Commission has not sought to flout the Court or escape its mandate. The Commission has attempted to be responsive to the Court's opinion and, at the same time, has sought to avoid unnecessary disruption of its licensing and regulatory program. It interpreted the Court's opinion with full recognition that the Court would correct its interpretation if the Court had intended to vacate the rule.

**Separate Statement of Commissioner Roberts**

I join in the separate statement of Chairman Palladino. In addition, I would point out that, of the five contentions perceived by the Court to have been raised by the petitioners' challenge, the Court agreed only with the last—that the rule is not supported by its accompanying statement of basis and purpose. In discussing the grounds for its remand, the Court addressed only its basis for disagreement with that portion of the rule that would eliminate a financial qualifications review in connection with consideration of applications for construction permits. The Court concluded that, in refusing to consider, in a vacuum, the general ability of utilities to finance the *construction* of new generation facilities, the Commission had abandoned what seemed to the Court "the only rational basis enunciated for generally treating public utilities differently for the purpose at hand."

The Court apparently did not focus on the rationality of the Commission's basis for treating public utilities differently for the purpose of considering applications for operating licenses. Thus, it appears unlikely that the Court intended, or had any reason, to vacate that portion of the rule eliminating a financial qualifications review in connection with consideration of applications for operating licenses.

**Separate Views of Commissioner Bernthal**

I believe that the Commission's action in instituting the recent rulemaking proceeding is fully responsive to the Court's mandate. As the Commission's policy statement indicates, the Court's criticism of the Commission's rationale for the March 1982 rule related solely to issues which, even under the pre-1982 rule, would be litigable only at the construction permit stage of review. Therefore, even if one assumes for the sake of argument that the Court vacated the rule insofar as it found the Commission's rationale inadequate, the Commission took prompt action in modifying the 1982 regulation by proposing a rule which woud reinstate financial qualifications reviews for all construction permit applicants.

I have based my decision on a plain reading of the opinion of the Court, wherein the Court listed the five contentions raised by the appellants, and noted "We agree with the last [of the five contentions]." That is, the Court held that "the rule is not supported by its accompanying statement of basis and purpose * * *" and accordingly *remanded* the rule to the agency. Given that holding, I believe the Commission's action is directly and precisely responsive to the decision of the Court. It is unfortunate that the Commission was required to consider elaborate arguments and interpretations based on legal precedent to resolve what should have been a straightforward matter.

I concur in the views of the Chairman and Commissioner Roberts.

**Separate Views of Commissioner Asselstine**

The Commission's policy statement is both shortsighted and most likely illegal. The Commission is in effect betting that the D.C. Circuit will not now act to make it *very* clear that the Commission's "new" financial qualifications rule has indeed been vacated, and that the Commission must re-open all those proceedings in which the rule was used to exclude financial qualification contentions. I choose not to join the majority in this course because I believe that the Court's previous decision effectively vacates the Commission's 1982 financial qualifications rule. Moreover, I believe that the Commission's approach risks in the long run serious disruptions and delays to pending cases.

Our Executive Legal Director, our General Counsel and now the Department of Justice have all advised the Commission that the decision of the D.C. Circuit did indeed vacate the Commission's 1982 financial qualifications rule. They told us that this means that the old rule governs until the Commission can substitute a valid new rule removing the issue from proceedings. The best that our legal advisors could say about the course being pursued by the Commission is that the Commission's position is "colorable" given the absence of explicit language in the Court's decision vacating the rule. They indicated, however, that they would not advise taking this course because of the significant litigation risk involved. My reading of the case law leads me to agree with their conclusion.

To deal with this situation, the General Counsel proposed an interim policy statement which would have enabled the boards and parties to resolve the financial qualifications issue in individual cases in an expeditious manner. There would have been some unavoidable, short-term delay and some inconvenience in a few cases. However, had the Commission acted in a timely manner to adopt that policy statement when it was proposed a month ago, much of that inconvenience and delay would be over by now.

Instead, the Commission has chosen to ignore the advice of all of its legal advisors and to act as if the 1982 rule were still valid. By pursuing this course, the Commission risks reaction by the D.C. Circuit which would not only reject the Commission's erroneous interpretation of the Court's previous decision but which would also set out precisely what the Commission must do in the case of those proceedings decided under the invalid rule. Any flexibility in dealing with these proceedings could well be lost to the Commission, and serious delays and disruption could result if the Court decides several months from now that all of these proceedings must be reopened.

Moreover, it is not clear that there exists an adequate factual basis to support a new rule eliminating financial qualification issues from all nuclear powerplant operating license proceedings. For example, even if it is possible to demonstrate that electric utilities receive routine approval of funding requests to cover the cost of operating a nuclear powerplant—an essential element in the justification for the Commission's new proposed financial qualification rule, this does not necessarily assure that these funds will be used by the utility for meeting operating plant safety needs. The financial difficulties facing several electric utilities in meeting the cost of ongoing construction programs and in providing an adequate rate of return on

investment are widely publicized. It is likely that in such cases these factors can create pressures on the utility to reallocate operating funds to other competing functions. In such circumstances, ratemaking decisions sufficient to cover operating expenses alone would not necessarily provide an adequate justification for excluding financial qualification issues from operating license proceedings.

Perhaps most disturbing of all is the Commission's willingness in this case, as well as in some other recent decisions, to take what are at best questionable legal positions for the sake of gaining a perceived short-term benefit. This approach does everyone involved in our licensing proceedings a disservice and has several unfortunate consequences. Such procedural shortcuts can ultimately be very disruptive to many ongoing licensing proceedings if a court rejects the Commission's approach months or years later, when the number of affected proceedings has grown substantially. Furthermore, continually taking questionable legal positions can easily lead to a much more searching and critical attitude on the part of reviewing courts, and to adverse decisions that can seriously restrict agency flexibility in dealing with future cases. Finally, the Commission's approach simply reinforces the belief of many that this agency will go to any lengths to deny members of the public a fair opportunity to raise issues in our licensing proceedings and to have those issues fully and fairly litigated.

Signed in Washington, D.C., this 7th day of June 1984.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 84-15734 Filed 6-11-84; 8:45 am]

BILLING CODE 7590-01-M

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## 10 CFR Part 170

## Revision of License Fee Schedule

*Correction*

In FR Doc. 84-13517 beginning on page 21293 in the issue of Monday, May 21, 1984, make the following corrections:

1. On page 21293, second column, the **EFFECTIVE DATE** now reading "June 18, 1984" should read "June 20, 1984".

2. On the same page, third column, second complete paragraph, line four, "developed" should read "developing".

3. On page 21294, first column, line eleven, "Broadcaster" should read "Broadcasters".

4. On the same page, first column, line seventeen, "*Commission*" should read "*Communication*".

5. On page 21295, first column, **Elimination of Ceilings**, paragraph three, first line, "not" should read "no".

6. On page 21296, first column, second complete paragraph, line eighteen, "four" should read "for".

7. On the same page, third column, first complete paragraph, line three, "efective" should read "effective".

8. On page 21297, first column, first complete paragraph, line thirteen, "335" should read "355".

9. On page 21299, third column, first complete paragraph, insert the sentence "An individual operator cannot be licensed apart from a facility." between lines fourteen and fifteen.

10. On page 21300, third column, eleventh line from the bottom, "that" should read "than".

11. On page 21301, first column, **Regulatory Flexibility Certification**, line fourteen, "consider" should read "considered".

**§ 170.21 [Corrected]**

13. On page 21304, first column, footnote one, line five "a" should appear before "specific"; and in line fourteen, "of" should read "or".

14. On the same page, first column, footnote two, line twenty, "ahs" should read "has".

**§ 170.31 [Corrected]**

15. On page 21305, column one, § 170.31, entry 3.B., line seven, "licensees" should read "license"; entry 3.E., line one, "uses" should read "use"; and in entry 3.G., line one "uses" should read "use".

16. On the same page, column two, entry 3.K., line eight, "licensess" should read "licenses".

17. On the same page, column three, entry 5.B. line five, "Licenes" should read "License".

18. On page 21306, column three, footnote 1(d), line sixteen, "in" should appear between "10F," and "which".

19. On the same page, column three, footnote 2, first line, "or" should read "for".

**§ 170.32 [Corrected]**

20. On page 21307, § 170.32, column one of the table, entry 2.A., line four, "ion-exchanging" should read "ion-exchange"; also in entry 2.B., line one, "possession" should read "processing".

21. On the same page column four of the table, the eleventh and twelfth entries from the bottom, should appear as one entry read "1 per 7 year per inspection"; entries seven and eight from the bottom should appear as one entry reading "1 per year per inspection"; and entries three and four from the bottom should appear as one entry reading "1 per 2 years per inspection".

22. On page 21308, first column in the table, entry K, second line, "times" should read "items"; and in entry P, first line, "materaial" should read "material".

23. On the same page, column four in the table, lines three and four should appear as one entry reading "1 per year per inspection"; lines seven and eight should appear as one entry reading, "1 per 3 years per inspection"; lines nine and ten should appear as one entry reading, "1 per 3 years per inspection"; lines eleven and twelve, should appear as one entry reading, "1 per 3 years per inspection"; lines thirteen and fourteen should appear as one entry reading, "1 per 3 years per inspection"; and lines fifteen and sixteen should appear as one entry reading, "1 per 3 years per inspection".

**§ 170.51 [Corrected]**

24. On page 21309, column one, § 170.51, line six, "10 CFR 51.31" should read "10 CFR 15.31".

BILLING CODE 1505-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

## 20 CFR Part 404

**[Reg. No. 4]**

## Federal Old-Age, Survivors, and Disability Insurance; Gender Discrimination; Foreign Work Test; Special Age-72 Benefits; Benefit Reduction for Widows and Widowers; and Acknowledgement of Natural Child

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Social Security Administration is amending its regulations to implement certain Title III provisions of Pub. L. 98-21—"The Social Security Amendments of 1983"—that eliminate gender based distinctions in the Social Security Act. We are also making changes to reflect two other Pub. L. 98-21 provisions. One amendment changes the work test for the beneficiary doing non-covered work outside the United States from 7 days in a month to more than 45 hours in a month before losing benefits for that month. The other amendment eliminates

the added benefit reduction that applies when computing benefits for a disabled widow or widower who is entitled to benefits prior to age 60. Additionally, we are amending the regulation on establishing a parent-child relationship for Social Security benefit entitlement purposes between the insured and his or her illegitimate child to expressly reflect a provision of the Social Security Act (the Act). This amendment states the time at which an acknowledgement, court order, or court decree must be made.

**DATE:** These regulations are effective June 12, 1984. We will consider any comments received by August 13, 1984. We will revise and republish these regulations if public comment warrant.

**ADDRESS:** Comments should be submitted to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** C. H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597–3408.

**SUPPLEMENTARY INFORMATION:** These regulatory amendments include the provisions of an unrevised section of the Social Security Act (the Act) and sections of the Act revised by the following sections in Pub. L. 98–21:

**1. Sections 303 and 333 of Pub. L. 98–21 and Section 216(h)(3)(C) of the Social Security Act (the Act)**

We are making the following amendments to § 404.355 of the regulations. The first amendment reflects the provisions of section 303 of Pub. L. 98–21 which provide that the kind of evidence establishing an illegitimate child's relationship to a male worker can now be used to establish such a relationship to a female worker. The second amendment reflects the provisions of section 333 of Pub. L. 98–21 which provide for deeming the written acknowledgement, court decree, or court order establishing a child-parent relationship to have occurred on the first day of the month it actually occurred for purposes of the entitlement of an illegitimate child on the earnings record of a disability insurance beneficiary. The third amendment reflects the present section 216(h)(3)(C) provisions of the Social Security Act (the Act) which provide that the written acknowledgement, court decree, or court order must be made before the death of the insured to establish a child-parent relationship.

**Note.**—This last amendment is being made because the current § 404.355 does not expressly state the time requirement specified in the section 216(h)(3)(C) provisions.

**2. Section 305 of Pub. L. 98–21**

We are amending § 404.383 to provide that where both husband and wife qualify for the special age 72 benefits payable under section 228 of the Act, a full benefit will be paid each spouse. This special benefit can be paid to persons who attained age 72 before 1968 and had no quarters of coverage under Social Security and to persons who attained age 72 in 1968 or later and had at least 3 quarters of coverage for every year after 1966 and before the year of attainment of age 72. In addition, the government offset provision of § 404.384 is amended to reflect this change.

**3. Sections 301(a)(4), 301(a)(7), 301(b)(7) and 307 of Pub. L. 98–21**

We are amending §§ 404.332, 404.341, 404.352 and 404.371 to provide for continuing the benefits of a divorced wife, divorced husband, female childhood disability beneficiary, mother, father, or female parent beneficiary whose spouse's benefits end because the spouse's disability ceased. These amended sections eliminate the provisions that terminated the benefit entitlement of a female (but not a male) parent, or childhood disability beneficiary whose spouse's benefit entitlement terminated due to cessation of disability, and also provide similar protection to persons receiving divorced wife's, divorced husband's, mother's and father's benefits. Also, we further amended §404.332 to show that wife's (or husband's) benefits may continue despite marriage to someone receiving husband's (or wife's) benefits and § 404.371 to show that a female's parent's benefits may continue despite her marriage to someone receiving husband's benefits.

**4. Section 308 of Pub. L. 98–21**

We are amending § 404.1343 to permit a widower to waive a civil service survivor's annuity and apply his deceased spouse's military service wage credits for any period before 1957 to a Social Security survivor's benefit. Previously, only a widow had this waiver right.

**5. Sections 309(c) and 134 of Pub. L. 98–21**

We are amending §§ 404.410 and 404.421 because section 309(c) of Pub. L. 98–21 provides that a husband's or widower's benefit is not actuarially reduced for any month the person has an entitled child under age 16 in his care. Previously, this rule applied only to persons entitled to wife's or widow's benefits. We also are amending § 404.410 because section 134 of Pub. L. 98–21 eliminates the added benefit reduction factor that was applied against disabled widow's and disabled widower's benefits when benefit entitlement began prior to age 60.

**6. Section 309(d)(1) of Pub. L. 98–21**

We are amending § 404.421 because section 309(d)(1) of Pub. L. 98–21 provides that a person, by filing a certificate of election, can receive actuarially reduced husband's benefits in any month in which he does not have an entitled child in his care. Previously, this right applied only to persons entitled to wife's benefits.

**7. Section 309(d)(2) of Pub. L. 98–21**

We are amending § 404.412 because section 309(d)(2) of Pub. L. 98–21, provides that a beneficiary whose husband's or widower's benefits are reduced because he elected to receive benefits prior to age 65 may have the reduction period adjusted to exclude months that he had the worker's entitled child in his care. Previously, this right applied only to the beneficiary entitled to wife's or widow's benefits.

**8. Sections 309(g) and (h) of Pub. L. 98–21**

We are amending § 404.417 because sections 309(g) and (h) of Pub. L. 98–21 provide for a new foreign work test. Under that test, a beneficiary who is under age 70 and whose benefit eligibility is not based on disability cannot work in noncovered remunerative activity outside the United States in excess of 45 hours in a month without losing his or her benefits for that month. However, the dependents of the insured beneficiary will not have deductions applied against their benefits unless the insured works 7 or more days in that month. We also amended §§ 404.420 and 404.450 to reflect this change in the foreign work test.

We are also amending § 404.421 because of the provisions in section 309(g) under which deductions are imposed on benefits otherwise payable to a husband or a father beneficiary for months(s) in which he does not have the insured's child entitled to child's

benefits "in his care". The current regulation provides only that wife or mother's benefits are subject to benefit deductions for not having a child in care.

**9. Section 309(k) of Pub. L. 98–21**

We are amending § 404.335 because section 309(k) of Pub. L. 98–21 provides that an individual who had been entitled or potentially entitled to "husband's" benefits in the month before the month of marriage to the worker does not have to meet the 9-month duration of marriage requirement that is otherwise required for widower's benefit entitlement. Previously, only a wife beneficiary requesting widow's benefits was exempted from the 9-month marriage requirement.

**Regulatory Procedures**

We are publishing these regulations as a final rule with a 60-day comment period. We find good cause exists to dispense with notice and public comment procedures in accordance with section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Prior notice and comment are unnecessary because these changes are technical in nature and the statutory provisions they reflect do not allow for policy discretion in implementation. Furthermore, the statutory provisions became effective no later than May 1983.

*Executive Order 12291*

These regulations have been reviewed under Executive Order 12291 and none of them meet the criteria for a major regulation. These regulations implement statutory provisions and the costs involved are caused by the statutory provisions and not by the regulations.

*Paperwork Reduction Act*

These regulations do not impose any additional reporting or recordkeeping requirements that are subject to OMB clearance. The reporting requirements contained in § 404.450 (a) and (b) already are approved by OMB and the information is collected by use of the form SSA–1435, Reporting Changes that Affect your Social Security Payment (OMB #0960–0073).

*Regulatory Flexibility Act*

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they will affect individuals only. Moreover, any impact that these regulations may have is solely the result of legislation rather than these regulations.

(Catalog of Federal Domestic Assistance Programs: No. 13.803 Social Security Retirement Insurance; No. 13.805 Social Security Survivor's Insurance; No. 13.802 Social Security Disability Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and Disability insurance.

Dated: March 9, 1984.

**Martha A. McSteen,**

*Acting Commissioner of Social Security.*

Approved: May 14, 1984.

**Margaret M. Heckler,**

*Secretary of Health and Human Services.*

**PART 404—[AMENDED]**

Part 404 of Chapter III, title 20, of the Code of Federal Regulations is added to, revised, or amended as follows:

1. The authority citation for Subpart D reads as follows:

**Authority:** Secs. 202, 205, 216, 223, 225, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 94 Stat. 449, 80 Stat. 67, 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. In § 404.332, paragraph (b)(3) is revised to read as follows:

**§ 404.332 When wife's and husband's benefits begin and end.**

* * * * *

(b) * * *

(3) You are the divorced wife or divorced husband and you remarry. However, your benefits will not end if your remarriage is to someone entitled to benefits as a wife, husband, widow, widower, father, mother, parent, or disabled child.

* * * * *

3. In § 404.335, paragraph (a)(4) is revised to read as follows:

**§ 404.335 Who is entitled to widow's or widower's benefits.**

* * * * *

(a) * * *

(4) In the month before you married the insured, you were entitled to or, if you had applied and had been old enough, could have been entitled to any of these benefits or payments: widow's, widower's, father's, mother's, wife's, husband's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children age 18 or older;

* * * * *

4. In § 404.341, paragraph (b)(3) is revised to read as follows:

**§ 404.341 When mother's and father's benefits begin and end.**

* * * * *

(b) * * *

(3) *You remarry.* Your benefits will not end, however, if you marry someone entitled to old-age, disability, wife's, husband's, widow's, widower's, father's, mother's, parent's or disabled child's benefits.

* * * * *

5. In § 404.352, paragraph (b)(2) is revised to read as follows:

**§ 404.352 When child's benefits begin and end.**

* * * * *

(b) * * *

(2) *You marry.* Your benefits will not end, however, if you are age 18 or older, disabled, and you marry a person entitled to child's benefits based on disability or person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits.

* * * * *

6. Section 404.355, is amended by revising paragraphs (c) and (d) to read as follows:

**§ 404.355 Who is the insured's natural child.**

* * * * *

(c) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. In the case where the insured is deceased, the acknowledgement, court decree, or court order must have been made before his or her death. For purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgement, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(d) Your mother of father has not married the insured but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms "living with" and "contributing to your support". If the insured is not alive at the time of your application you must

have evidence to show that the insured was either living with you or contributing to your support when he or she died.

7. In § 404.371, paragraph (b)(2) is revised to read as follows:

**§ 404.371 When parent's benefits begin and end.**

* * * * *

(b) * * *

(2) You marry, unless your marriage is to someone entitled to wife's, husband's, widow's, widower's, mother's, father's, parent's or disabled child's benefits. If you marry a person entitled to these benefits, the marriage does not affect your benefits.

* * * * *

8. Section 404.383 is revised to read as follows:

**§ 404.383 Special age 72 payment amounts.**

(a) *Payment from May 1983 on.* If you are entitled to special age 72 payments from May 1983 on, you will receive a monthly payment of $125.60. If your spouse is also entitled to special age 72 payments, he or she will also receive $125.60. This amount, first payable for June 1982, will be increased when "cost-of-living" adjustments of Social Security benefits occur. This special payment may be reduced, suspended or not paid at all as explained in § 404.384.

(b) *Payment prior to May 1983.* If a husband or a single individual is entitled to special age 72 payments for months prior to May 1983, the amount payable was $125.60 for the months since June 1982. The wife received an amount approximiately one-half the husband's amount (i.e., $63.00 for months in the period June 1982-April 1983).

9. In § 404.384, paragraph (d) is revised to read as follows:

**§ 404.384 Reductions, suspensions, and nonpayments of special age 72 payments.**

* * * * *

(d) *Amount of reduction because of a government pension.* If you are eligible for a government pension, the amount of the pension will be subtracted from your special age 72 payment. If your spouse is eligible for a government pension but is not entitled to the special payment, your special payment is reduced (after any reduction due to your own government pension) by the difference between the pension amount and the full special payment amount. If both you and your spouse are entitled to the special payment, each spouse's payment is first reduced by the amount of his or her own government pension (if any). Then, the wife's special payment is reduced by the amount that the husband's government pension exceeds the full special payment. The husband's special payment is also reduced by the amount that the wife's government pension exceeds the full special payment.

* * * * *

10. The authority citation for Subpart E to Part 404 reads as follows:

**Authority:** Secs. 205, 207, and 1102, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 427, 1302.

11. Section 404.410 is revised to read as follows:

**§ 404.410 Reduction in benefits for age—general.**

An individual's old-age insurance benefit, wife's or husband's benefit or widow's or widower's benefit is reduced if he or she is entitled to the benefit for a month before the month he or she reaches retirement age. For purposes of this section and §§404.411–404.413, retirement age is age 65; except that for months prior to January 1973, retirement age for widows and widowers is age 62. However, in the case of an individual entitled to wife's or husband's benefits, there is no reduction in benefits for any month he or she has in his or her care a child of the insured individual on whose earnings record he or she is entitled if the child is entitled to child's insurance benefits. Similarly, in the case of an individual entitled to widow's or widower's benefits, such benefits will not be reduced below the amount an individual entitled to mother's or father's benefits would receive for any month he or she has in his or her care a child of the insured individual on whose earnings record he or she is entitled if the child is entitled to child's benefits. Reductions in benefits are, subject to §§404.411–404.413, made in the amounts described below:

(a) In the case of old-age insurance benefits, the individual's primary insurance amount is reduced by $\frac{5}{9}$ of 1 percent multiplied by the number of months preceding the month in which he or she attains retirement age for which he or she is entitled to such benefits;

(b) In the case of wife's or husband's benefits, the individual's benefit amount before any reduction (see § 404.304 and § 404.333) is reduced first (if necessary) for the family maximum under § 404.403, and then further reduced by $\frac{25}{36}$ of 1 percent multiplied by the number of months preceding the month in which he or she attains retirement age for which he or she is entitled to such benefits (but not including any month in which such wife or husband has in his or her care a child of the insured individual on whose earnings record he or she is entitled if the child is entitled to child's benefits);

(c)(1) In the case of widow's or widower's benefits, the individual's benefit amount (for months after December 1972, the amount equal to the insured person's primary insurance amount and for earlier months, the amounts described in §§ 404.304 and 404.338), after any reduction for the family maximum under § 404.403, is reduced or further reduced by $\frac{19}{40}$ of 1 percent multiplied by the number of months in the period beginning with the month of attainment of age 60 and ending with the month immediately before the month of attainment of age 65, for which he or she is entitled to such benefits (but not including any month in which such widow or widower has a child of the insured individual in his or her care if the child is entitled to child's benefits). For months prior to January 1973, the widow's or widower's benefit is reduced in the way described in the preceding sentence except that the percentage rate is $\frac{5}{9}$ of 1 percent multiplied by the number of months from age 60 to 62 instead of $\frac{19}{40}$ of 1 percent multiplied by the number of months from age 60 to 65.

(2) For those widows and widowers receiving benefits based on disability and whose entitlement begins prior to their attaining age 60, their benefits are—

(i) For months after December 1983, not subject to any reduction of their benefits in addition to that under paragraph (c)(1) of this section;

(ii) For the period January 1, 1973–December 31, 1983, subject to a reduction under paragraph (c)(1) of this section and an additional reduction formula of $\frac{43}{240}$ of 1 percent multiplied by: (A) The benefit before any reduction for age and (B) the number of months of entitlement to such benefit in the period beginning with month of attainment of age 50 and ending with the month preceding month of attainment of age 60; and

(iii) For months prior to January 1973, subject to the reduction formula described in paragraph (c)(2)(ii) of this section with, however, the percentage rate set at $\frac{43}{198}$ of 1 percent.

(d) Benefits reduced under this section may be later adjusted to eliminate reduction for certain months of entitlement prior to retirement age as provided in § 404.412. For special provisions on reducing benefits for months prior to retirement age involving entitlement to two or more benefits and for reducing widow's and widower's benefits on the earnings record of a deceased individual previously entitled

to old-age insurance benefits, see §§ 404.411 and 404.338, respectively.

12. In § 404.412, paragraphs (a)(2) and (a)(4) are revised to read as follows:

**§ 404.412 Adjustments in benefit reductions for age.**

(a) * * *

(2) In the case of wife's or husband's insurance benefits, any month in which she or he had a child of the insured individual in her or his care and for which the child was entitled to child's benefits;

* * * * *

(4) In the case of widow's or widower's insurance benefits, any month in which she or he had in her or his care a child of the deceased insured individual and for which the child was entitled to child's benefits;

* * * * *

13. Section 404.417 is revised to read as follows:

**§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 45 hour and 7-day work test.**

(a) *Deductions because of individual's activity.*—(1) *Prior to May 1983.* For months prior to May 1983, a 7-day work test applies in a month before benefit deductions are made for noncovered remunerative activity outside the United States. A deduction is made from any monthly benefit (except disability insurance benefits, child's insurance benefits based on the child's disability, or widow's or widower's insurance benefits based on the widow's or widower's disability) payable to an individual for each month in a taxable year beginning after December 1954 in which the beneficiary, while under age 72 (age 70 after December 1982), engages in noncovered remunerative activity (see § 404.418) outside the United States on 7 or more different calendar days. The deduction is for an amount equal to the benefit payable to the individual for that month.

(2) *From May 1983 on.* Effective May 1983, a 45-hour work test applies before a benefit deduction is made for the noncovered remunerative activity performed outside the United States in a month by the type of beneficiary described in paragraph (a)(1) of this section.

(b) *Deductions from benefits because of earnings or work of an insured individual.* A deduction is made for a month from any wife's, husband's, or child's insurance benefit payable (or deemed payable—see § 404.420) on the insured individual's earnings record if the insured individual is entitled to old-age benefits and worked 7 or more days in that month. This rule applies both before and after May 1983. This deduction is an amount equal to any such wife's, husband's, or child's benefit.

14. Section 404.420 is revised to read as follows:

**§ 404.420 Persons deemed entitled to benefits based on an individual's earnings record.**

For purposes of imposing deductions under the annual earnings test (see § 404.415) and the foreign work test (see § 404.417), a person who is married to an old-age insurance beneficiary and who is entitled to a mother's or father's insurance benefit or a child's insurance benefit based on the child's disability (and all these benefits are based on the earnings record of some third person) is deemed entitled to such benefit based on the earnings record of the old-age insurance beneficiary to whom he or she is married. This section is effective for months in any taxable year of the old-age insurance beneficiary that begins after August 1958.

15. Section 404.421 is amended by revising the introductory test, and paragraphs (a) through (c) to read as follows:

**§ 404.421 Deductions because beneficiary failed to have a child in his or her care.**

Deductions for failure to have a child in care (as defined in Subpart D of this part) are made as follows:

(a) *Wife's or husband's insurance benefits.* A deduction is made from the wife's or husband's insurance benefit to which he or she is entitled for any month if he or she is under age 65 and does not have in his or her care a child of the insured entitled to a child's insurance benefit. However, a deduction is not made for any month in which he or she is age 62 or over, but under age 65, and there is in effect a certificate of election for him or her to receive an actuarially reduced wife's or husband's insurance benefit for such month (see Subpart D of this part).

(b) *Mother's or father's insurance benefits*—(1) *Widow or Widower.* A deduction is made from the mother's or father's insurance benefit to which he or she is entitled as the widow or widower (see Subpart D of this part) of the deceased individual upon whose earnings such benefit is based, for any month in which he or she does not have in his or her care a child who is entitled to a child's insurance benefit based on the earnings of the decreased insured individual.

(2) *Surviving divorced mother or father.* A deduction is made from the mother's or father's insurance benefit to which he or she is entitled as the surviving divorced mother or father (see Subpart D of this part) of the deceased individual upon whose earnings record such benefit is based, for any month in which she or he does not have in care a child of the deceased individual who is her or his son, daughter, or legally adopted child and who is entitled to a child's insurance benefit based on the earnings of the deceased insured individual.

(c) *Amount to be deducted.* The amount deducted from the benefit, as described in paragraphs (a) and (b) of this section, is equal to the amount of the benefit which is otherwise payable for the month in which she or he does not have a child in his or her care.

* * * * *

16. In § 404.450, paragraphs (a) and (b) are revised to read as follows:

**§ 404.450 Required reports of work outside the United States or failure to have care of a child.**

(a) *Beneficiary engaged in noncovered remunerative activity; report by beneficiary.* Any individual entitled to a benefit which is subject to a deduction in that month because of noncovered remunerative activity outside the United States (see § 404.417) shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which such event occurred.

(b) *Beneficiary receiving wife's, husband's, mother's or father's insurance benefits does not have care of a child; report by beneficiary.* Any person receiving wife's, husband's, mother's, or father's insurance benefits which are subject to a deduction (as described in § 404.421) because he or she did not have a child in his or her care shall report the occurrence of such an event to the Social Security Administration before the receipt and acceptance of a benefit for the second month following the month in which the deduction event occurred.

* * * * *

17. The authority citation for Subpart N to Part 404 reads as follows:

**Authority:** Secs. 205, 210, 217, 229, and 1102 of the Social Security Act, as amended, 53 Stat. 1368, as amended, 64 Stat. 494, 64 Stat. 512, as amended, 81 Stat. 833 as amended, 49 Stat. 647 as amended; 42 U.S.C. 405, 410, 417, 429, and 1302.

18. Section 404.1343 is amended by revising paragraph (b) to read as follows:

**§ 404.1343 When the limits on granting World War II and post-World War II wage credits do not apply.**

* * * * *

(b) If you are the surviving spouse or child of a veteran of the World War II period or post-World War II period and you are entitled under the Civil Service Retirement Act of 1930 to a survivor's annuity based on the veteran's active service and—

(1) You give up your right to receive the survivor's annuity;

(2) A benefit under the Civil Service Retirement Act of 1930 based on the veteran's active service was not payable to the veteran; and

(3) Another Federal benefit is not payable to the veteran or his or her survivors except as described in paragraph (c) of this section; or

* * * * * *

[FR Doc. 84-15698 Filed 6-11-84; 8:45 am]
BILLING CODE 4190-11-M

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## Food and Drug Administration

## 21 CFR Parts 100, 182, and 184

**[Docket No. 83N-0211]**

## GRAS Status of Copper Gluconate, Copper Sulfate, Cuprous Iodide, and Peptonized Copper

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is affirming that copper gluconate, copper sulfate, and cuprous iodide are generally recognized as safe (GRAS) as direct human food ingredients. In addition, the agency finds that peptonized copper is not GRAS. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

**DATES:** Effective July 12, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1260 effective on July 12, 1984.

**FOR FURTHER INFORMATION CONTACT:** Robert Leo Martin, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 1, 1984 (49 FR 4008), FDA published a proposal to affirm that copper gluconate, copper sulfate, and cuprous iodide are GRAS for use as direct human food ingredients and to find that peptonized copper is not GRAS. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on copper gluconate, copper sulfate, and cuprous iodide are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of copper gluconate, copper sulfate, and cuprous iodide, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient use for these ingredients or for peptonized copper other than the proposed conditions of use. Persons asserting additional or extended use in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of copper gluconate, copper sulfate, cuprous iodide, and peptonized copper recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for copper gluconate, copper sulfate, cuprous iodide, or peptonized copper were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of copper gluconate, copper sulfate, cuprous iodide, or peptonized copper under conditions different from those set forth in this final rule has been waived.

One comment, from a user of copper salts, was received in response to the agency's proposal. The comment was in agreement with FDA's intent to affirm as GRAS copper gluconate, copper sulfate, and cuprous iodide.

The agency acknowledges this comment. Because this comment essentially agrees with FDA, no changes are being made in the final rule as a result of this comment. The agency is therefore issuing the proposed regulations, with minor editorial changes, as a final rule. FDA also finds, for the reasons set forth in the proposal (49 FR 4011) that peptonized copper is not GRAS.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for copper sulfate and cuprous iodide used as direct human food ingredients and would incorporate those specifications into the regulations on these substances when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, copper sulfate and cuprous iodide for direct food uses must comply with the descriptions in 21 CFR 184.1261 and 184.1265, respectively, and be of food-grade purity (21 CFR 184.1(b)(3) and 170.30(h)(1)).

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.