regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

Andrews, SC [Removed]

Issued in East Point, Georgia, on June 30, 1989.

**Don Cass,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-17246 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

---

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 218

### RIN 3320-AA13

## Annuity Beginning and Ending Dates

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby amends Part 218 of its regulations to implement sections 103 and 104 of the Railroad Retirement Solvency Act of 1983, which amended section 5 of the Railroad Retirement Act covering annuity beginning and ending dates, and section 7302 of the Railroad Unemployment Insurance and Retirement Improvement Act which eliminated the last person service disqualification. This final rule also revises Part 218 to simplify the language and make the regulations easier to use.

**DATE:** July 24, 1989.

**ADDRESS:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

**SUPPLEMENTARY INFORMATION:** The Board's regulations concerning annuity beginning and ending dates were issued in December 1981 and do not reflect the addition of new categories of beneficiaries provided for in Title XI, Subtitle D of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) namely, divorced spouses, surviving divorced spouses and remarried widow(er)s, nor do they reflect amendments made to the Act by the Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76). These amendments generally limited annuity beginning dates for most annuities to a maximum of six months before the application for the annuity was filed. Part 218 is revised to reflect these changes. In addition, Part 218 sets forth in greater detail than present Part 218 the rules restricting when annuities may begin and end.

The Board published Part 218 as a proposed rule on November 3, 1988 (53 FR 44477–44485) and invited comments by December 5, 1988. No comments were received. However, a reviewer within the agency discovered an error in proposed § 218.9(d)(2) which has been corrected to read "The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity." See 45 U.S.C. 231d(a)(iii)(D).

The proposed rule has also been revised to reflect the liberalization in post retirement work restrictions brought about by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988. Pub. L. 100–647, Title VII, Subtitle C. Section 7302 of Pub. L. 100–649 modified the "last person service" disqualification found in section 2(e) of the RRA to permit an individual to begin to receive an annuity while continuing to work for a non-railroad employer. See §§ 218.9, 218.11, 218.26, 218.27, and 218.28.

In this final rule the Board replaces current Part 218 Subpart A, General, with a new Subpart A, General. This Subpart A provides a better explanation of the contents of Part 218, and contains a new § 218.3 which describes the actions the Board takes when notice is received of an employee's disappearance.

The Board also revises the current Part 218 Subpart B: When An Annuity Begins, and portions of Subpart E, When Windfall Benefit Begins and Ends, by replacing it with a new Subpart B which provides a better explanation of the requirements for establishing when any annuity under the Act may begin. New § 218.7 is a redesignation of the current § 218.8 and is revised to explain that the three-month rule for designating an annuity beginning date does not apply to a disability annuity.

The Board revises current Part 218 Subpart C, How Work and Special Payments Affect An Employee Or Spouse Annuity Beginning Date, by replacing it with a new Subpart C, How Work And Special Payments Affect An Employee, Spouse, Or Divorced Spouse Annuity Beginning Date, which provides a better explanation of how work and special payments affect an employee or spouse annuity beginning date.

The Board revises current Part 218 Subpart D, When An Annuity Ends, by replacing it with a new Subpart D which provides a better explanation of the requirements for when any annuity under the Act may end.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these revisions to the regulations, Derivation and Distribution Tables follow:

DERIVATION TABLE

| New section and name | Current section and name |
|---|---|
| Part 218—Annuity Beginning And Ending Dates. | Part 218—Annuity Beginning And Ending Dates. |
| Subpart A—General | |
| 218.1 Introduction | 218.1 Introduction (except 2nd and 3rd sentences). |
| 218.2 Definitions | 218.2 Definitions (except definition of "Claimant"). |
| 218.3 When an employee disappears.—New. | |
| Subpart B—When An Annuity Begins | |
| 218.5 General rules | 218.5 General rules. |
| (a) New | |
| (b) | (b) |
| 218.6 How to choose an annuity beginning date. | 218.7 How to choose an annuity beginning date. |
| (a) | (a) |
| (b) | (b) |
| 218.7 When chosen annuity beginning date is more than three months after filing date. | 218.8 When chosen annuity beginning date is more than three months after filing date. |
| 218.8 When an individual can change the annuity beginning date. | 218.9 When an applicant can change the annuity beginning date. |
| (a) | (a) |
| (b) | (b) |
| 218.9 When an employee annuity begins.—New | |
| 218.10 When a supplemental annuity begins. | 218.6 When a supplemental annuity begins. |
| 218.11 When a spouse annuity begins.—New | |
| 218.12 When a divorced spouse annuity begins.—New | |
| 218.13 When a widow(er) annuity begins.—New | |
| 218.14 When a child annuity begins.—New | |
| 218.15 When a parent annuity begins.—New | |
| 218.16 When a surviving divorced spouse annuity begins.—New | |
| 218.17 When a remarried widow(er) annuity begins.—New | |
| Subpart C—How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date | |
| 218.25 Introduction | 218.15 Introduction. |
| 218.26 Work started after annuity beginning date. | 218.16 Work started after annuity beginning date. |
| 218.27 Vacation pay | 218.17 Vacation pay. |
| 218.28 Sick pay | 218.18 Sick pay. |
| (a) | (a) |
| (b) | (b) |
| 218.29 Pay for time lost. | 218.19 Pay for time lost. |
| 218.30 Separation, displacement, or termination pay. | 218.20 Separation, displacement, or termination pay. |
| (a) | 218.20 1st paragraph. |
| (b) | (b) |
| (c) | (c) |
| Subpart D—When an Annuity Ends | |
| 218.35 When an employee age annuity ends. | 218.25 Employee age annuity. |
| (a) | 218.25 |
| (b) New | |
| 218.36 When an employee disability annuity ends. | 218.26 Employee disability annuity. |
| 218.37 When a supplemental annuity ends. | 218.27 Supplemental annuity. |
| 218.38 When a spouse annuity ends—New. | 218.28 Spouse annuity. [Reserved] |
| 218.39 When a divorced spouse annuity ends.—New | |
| 218.40 When a widow(er) annuity ends.—New. | 218.29 Surviving spouse annuity. [Reserved] |
| 218.41 When a child annuity ends.—New. | 218.30 Child's annuity [Reserved] |
| 218.42 When a parent annuity ends. | 218.31 Parent's annuity. |
| (a) New | |
| (b) | 218.31 Except parenthetical statement at end of (c). |
| 218.43 When a surviving divorced spouse annuity ends.—New | |
| 218.44 When a remarried widow(er) annuity ends.—New | |

DISTRIBUTION TABLE

| Current section and name | New section and name |
|---|---|
| 218.1 Introduction—except second sentence. | 218.1 Introduction. |
| 218.2 Definitions—except words following "Claimant". | 218.2 Definitions. |
| 218.5 General Rules—except paragraph (a). | 218.5 General Rules. |
| 218.6 When a supplemental annuity begins. | 218.10 When a supplemental annuity begins. |
| 218.7 How to choose an annuity beginning date. | 218.6 How to choose an annuity beginning date. |
| (a) | (a) |
| (b) except words "claimant" and "preparing". | (b) |
| 218.8 When chosen annuity beginning date is more than three months after filing date. | 218.7 When chosen annuity beginning date is more than three months after filing date. |
| 218.9 When an applicant can change the annuity beginning date. | 218.8 When an individual can change the annuity beginning date. |
| (a) Before an annuity is awarded.—except word "applicant" in introductory sentence. | (a) Before annuity is awarded. |
| (1)—except word "applicant". | (1) |
| (2) | (2) |
| (b) After annuity is awarded—introductory sentence words "if annuity has been awarded", and second sentence except words "However", and "as described in § 216.5(a)(2) of this chapter" and "as described in § 216.20(c)(l) of this chapter". | (b) After annuity is awarded. |
| | (1) |
| | (2) |
| 218.15 Introduction | 218.25 Introduction. |
| 218.16 Work started after annuity beginning date. | 218.26 Work started after annuity beginning date. |
| (a) General. | (a) General. |
| (b) Intent to retire. | (b) Intent to retire. |
| (1) | (1) |
| (2) —except word "or" following "railroad" in paragraph (i). | (2) |
| 218.17 Vacation pay | 218.27 Vacation pay. |
| 218.18 Sick pay | 218.28 Sick pay. |
| 218.19 Pay for time lost. | 218.29 Pay for time lost. |
| 218.20 Separation, displacement, or termination pay. —Introductory paragraph except words "as follows:" | 218.30 Separation, displacement, or termination pay. (a) General. |
| (a) Separation allowance. | (b) Separation allowance. |
| (b) Monthly compensation payments. | (c) Monthly compensation payments. |
| 218.25 Employee age annuity. | 218.35 When an employee age annuity ends. (a) Entire annuity. |
| 218.26 Employee disability annuity. | 218.36 When an employee disability annuity ends. |
| (a) Ending date | (a) Ending date. |
| (1) | (1) |
| (2) except word "becomes". | (3) |
| (3) | (2) |
| (b) Effect of ended disability annuity on eligibility for a later annuity—except word "becomes" in second sentence. | (b) Effect of ended disability annuity on eligibility for a later annuity. |
| 218.27 Supplemental annuity. | 218.37 When a supplemental annuity ends. |
| (a)—plus introductory paragraph except words "with earliest of" | |
| (b) | Obsolete. |
| 218.28 Spouse Annuity [Reserved]. | 218.38 When a spouse annuity ends. |
| 218.29 Surviving spouse annuity. [Reserved]. | 218.39 When a widow(er) annuity ends. |

DISTRIBUTION TABLE—Continued

| Current section and name | New section and name |
|---|---|
| 218.30 Child's annuity. [Reserved]. | 218.40 When a child annuity ends. |
| 218.31 Parent's annuity—Introductory. | 218.31 When a parent annuity ends. Obsolete. |
| (a) | (a)(1) and (b)(1). |
| (b) | (b)(2). |
| (c) | (b)(3). |
| 218.35 When an employee windfall benefit begins. [Reserved]. | Unnecessary. |
| 218.36 When an employee windfall benefit ends. [Reserved]. | 218.35 When an employee age annuity ends. (b) Vested dual benefit based on disability. |
| 218.37 When a spouse windfall benefit begins. [Reserved]. | Unnecessary. |
| 218.38 When a spouse windfall benefit ends. [Reserved]. | Unnecessary. |
| 218.39 When a surviving spouse windfall benefit begins. [Reserved]. | Unnecessary. |
| 218.40 When a surviving spouse windfall benefit ends. [Reserved]. | Unnecessary. |

**List of Subjects in 20 CFR Part 218**

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is amended as follows:

1. Part 218, Annuity Beginning and Ending dates, is revised to read as follows:

## PART 218—ANNUITY BEGINNING AND ENDING DATES

### Subpart A—General

Sec.
218.1 Introduction.
218.2 Definitions.
218.3 When an employee disappears.

### Subpart B—When an Annuity Begins

218.5 General rules.
218.6 How to choose an annuity beginning date.
218.7 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual may change the annuity beginning date.
218.9 When an employee annuity begins.
218.10 When a supplemental annuity begins.
218.11 When a spouse annuity begins.
218.12 When a divorced spouse annuity begins.
218.13 When a widow(er) annuity begins.
218.14 When a child annuity begins.
218.15 When a parent annuity begins.
218.16 When a surviving divorced spouse annuity begins.

Sec.
218.17 When a remarried widow(er) annuity begins.

### Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

218.25 Introduction.
218.26 Work started after annuity beginning date.
218.27 Vacation pay.
218.28 Sick pay.
218.29 Pay for time lost.
218.30 Separation, or displacement, or dismissal allowance.

### Subpart D—When an Annuity Ends

218.35 When an employee age annuity ends.
218.36 When an employee disability annuity ends.
218.37 When a supplemental annuity ends.
218.38 When a spouse annuity ends.
218.39 When a divorced spouse annuity ends.
218.40 When a widow(er) annuity ends.
218.41 When a child annuity ends.
218.42 When a parent annuity ends.
218.43 When a surviving divorced spouse annuity ends.
218.44 When a remarried widow(er) annuity ends.

**Authority:** 45 U.S.C. 231f(b)(5).

### Subpart A—General

#### § 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

#### § 218.2 Definitions.

As used in this part:

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in Part 217 of this chapter.

"Award" means to process a form to make a payment.

"Claimant" means the person for whom an annuity application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

"Tier I benefit" means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

"Tier II benefit" means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

#### § 218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.* (1) The Board may pay survivor benefits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in Part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of Part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

### Subpart B—When an Annuity Begins

#### § 218.5 General rules.

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

#### § 218.6 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042)

### § 218.7 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in Part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042.)

### § 218.8 When an individual may change the annuity beginning date.

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

### § 218.9 When an employee annuity begins.

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the month in which the claimant attains age 65; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 62; or

(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 years of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

### § 218.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in Part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in Part 216 of this chapter.

### § 218.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in Part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a "child in care" as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section.

(ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service.

(iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;

(iv) The first day of the sixth month before the month in which the application is filed; or

(v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

### § 218.12 When a divorced spouse annuity begins.

(a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;

(iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability; or

(v) The first day of the month in which the final decree of divorce is effective.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65;

(iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or

(iv) The first day of the sixth full month before the month in which the application is filed if the employee is not entitled to a disability annuity or a period of disability.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or

(iii) The first day of the month in which the application is filed.

### § 218.13 When a widow(er) annuity begins.

(a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(2) *Reduced-age annuity.* (i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 60; or

(C) The first day of the sixth month before the month in which the application is filed.

(ii) *Widow(er) over age 62 but under age 65.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 62 and one month; or

(C) The first day of the month in which the application is filed.

(3) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a "child in care" as explained in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

### § 218.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in Part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in Part 220; or

(iv) The first day of the month in which the claimant attains age 18.

### § 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

### § 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 65; or
(iii) The first day of the sixth month before the month in which the application is filed.
(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 60; or
(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.
(4) *Disability annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 50;
(iii) The first day of the twelfth month before the month in which the application is filed; or
(iv) The first day of the sixth month after the month of disability onset.
(5) *"Child in Care" annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section; or
(ii) The first day of the sixth month before the month in which the application is filed.

**§ 218.17 When a remarried widow(er) annuity begins.**

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.
(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—
(i) The first day of the month in which the employee dies; or
(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in Part 216 of this chapter.
(2) *Full-age annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 65; or
(iii) The first day of the sixth month before the month in which the application is filed.
(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 60: or
(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.
(4) *Disability annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section;
(ii) The first day of the month in which the claimant attains age 50;
(iii) The first day of the twelfth month before the month in which the application is filed; or
(iv) The first day of the sixth month after the month of disability onset.
(5) *"Child in care" annuity.* The earliest date permitted by law is the latest of—
(i) The month shown in paragraph (b)(1) of this section; or
(ii) The first day of the sixth month before the month in which the application is filed.

## Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

**§ 218.25 Introduction.**

The rules in this subpart apply only to an employee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

**§ 218.26 Work started after annuity beginning date.**

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad employer. However, if the employee, spouse or divorced spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. However, an annuity cannot be paid for any month the employee, spouse or divorced spouse returns to work for a railroad employer.
(b) *Intent to retire*—(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when—
(i) The employee files for a disability annuity; or
(ii) The employee gives up all rights to return to work for a railroad employee before starting any new work.
(2) *Age annuity.* An "intent to retire" is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad employer before starting any new work.

**§ 218.27 Vacation pay.**

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)
(b) *From non-railroad employer.* Vacation pay will not affect the annuity beginning date.

**§ 218.28 Sick pay.**

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.
(b) *From non-railroad employer.* Sick pay will not affect the annuity beginning date.

**§ 218.29 Pay for time lost.**

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

**§ 218.30 Separation, displacement or dismissal allowance.**

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b) of this section, or monthly compensation payments as described in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal alowance is credited as compensation.)
(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.
(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

## Subpart D—When an Annuity Ends

**§ 218.35 When an employee age annuity ends.**

An employee annuity based on age ends with the last day of the month before the month in which the employee dies.

**§ 218.36 When an employee disability annuity ends.**

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee's disability ends; or

(3) The last day of the month before the month in which the employee attains age 65 (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for a later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains age 65, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

**§ 218.37 When a supplemental annuity ends.**

A supplemental annuity ends when the employee age or disability annuity ends.

**§ 218.38 When a spouse annuity ends.**

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the empoyee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in Part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in Part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled on the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

**§ 218.39 When a divorced spouse annuity ends.**

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

**§ 218.40 When a widow(er) annuity ends.**

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

(1) The widow(er) dies;

(2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in Part 216 of this chapter);

(3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in Part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care," his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains age 65 (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

**§ 218.41 When a child annuity ends.**

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in Part 216 of this chapter, if the child is a full-time student age 18 through 19; or

(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

**§ 218.42 When a parent annuity ends.**

(a) *Tier I.* The tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in Part 228 of this chapter);

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Remarries after the employee's death; or

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

**§ 218.43 When a surviving divorced spouse annuity ends.**

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

**§ 218.44 When a remarried widow(er) annuity ends.**

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the remarried widow(er)—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see Part 228 of this chapter); or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the remarried widow(er) attains age 65 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

Dated: July 14, 1989.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 89-17235 Filed 7-21-89; 8:45 am]

BILLING CODE 7905-01-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

[Docket No. 88F-0315]

### Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates as components of articles for use in contact with food. This action is in response to a petition filed by BYK Chemie GmbH.

**DATES:** Effective July 24, 1989, written objections and requests for a hearing by August 23, 1989.

**ADDRESSES:** Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 20, 1988 (53 FR 41241), FDA announced that a food additive petition (FAP 8B4103) had been filed by BYK Chemie GmbH, Abelstrasse 14, D-4230 Wesel, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of *alpha, omega*-bis(3-hydroxypropyl)dimethylpolysiloxane reaction product with *epsilon*-caprolactone, acetylated as components of articles for use in contact with food.

FDA has evaluated data in the petition and other relevant material and find it would be more appropriate to name the additive "siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates." Based on its review of the available evidence, the agency concludes that the proposed food additive use is safe. Therefore, the agency is amending paragraph (b)(3)(xxxiii) of § 175.300 to provide for the safe use of the proposed food additive.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 23, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by

alphabetically adding a new entry to read as follows:

**§ 175.300 Resinous and polymeric coatings.**

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates (CAS Reg. No. 116810-47-0) at a level not to exceed 0.025 weight percent of the finished coating having no greater than a 0.5 mil thickness for use as a component of polyester, epoxy, and acrylic coatings complying with paragraphs (b)(3)(vii), (viii), and (xx) of this section, respectively.

* * * * *

Dated: July 17, 1989

Fred R. Shank,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89-17296 Filed 7-21-89; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**[DoD 6010.8-R, Amdt. 23]**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Rebasing of Residential Treatment Center (RTC) Rates and Capped Amount

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise DoD 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule establishes the methodology and procedures for rebasing Residential Treatment Center (RTC) rates implemented on December 1, 1988. The new rates will reflect increases in RTC costs attributable to the treatment of more severely disturbed children. The new rates will assure continued high quality care for CHAMPUS beneficiaries.

**EFFECTIVE DATE:** December 1, 1988.

**FOR FURTHER INFORMATION CONTACT** David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 89-6934 appearing in the **Federal Register** on March 23, 1989 (54 FR 11966), the Office of the Secretary of Defense published for public comment a proposed amendment establishing the methodology and procedures for rebasing of the prospective all-inclusive RTC rates which went into effect on December 1, 1988.

The new reimbursement system was to go into effect on September 1, 1988; however, on August 10, 1988, a lawsuit was filed in the U.S. District Court for the District of Colorado seeking to enjoin implementation of the new reimbursement system. Pursuant to a court order, OCHAMPUS met with the plaintiffs' attorney and representatives of the National Association of Psychiatric Treatment Centers for Children (NAPTCC) in an attempt to resolve without judicial intervention those conflicts that were still existing over the methodology. In order to accommodate the negotiation process and to avoid preliminary injunction, the effective date of the RTC final rule was first postponed to October 1, 1988 (53 FR 33806 (September 1, 1988)) and later to December 1, 1988 (53 FR 38947 (October 4, 1988)).

Since August of 1988, OCHAMPUS staff and representatives from NAPTCC have engaged in serious discussions in person, by telephone, and by correspondence to resolve those major areas of dispute. Under a stipulation settlement both parties agreed to the following terms:

(1) The terms of the final rule published August 1, 1988, and revised October 4, 1988, shall become effective December 1, 1988.

(2) In going through this current rulemaking the rates determined under the final rule will be applied retroactively, as if the Rule were effective December 1, 1988.

(3) NAPTCC agreed that OCHAMPUS had the legal authority to promulgate the methodology in the August 1, 1988, rule establishing reimbursement for RTCs.

(4) NAPTCC agreed not to challenge OCHAMPUS' legal authority in establishing: (a) An overall cap on RTC per diem reimbursement; (b) a rate high enough to cover one-third of an RTC's total patient days during the base period; (c) an index based on the (CPI-U) for medical care; (d) an all-inclusive rate for RTCs; (e) provisions restricting the status of CHAMPUS authorized independent providers so that they may not directly provide and bill for RTC care; and (f) provisions restricting the delivery of RTC care solely to CHAMPUS authorized RTCs.

(5) OCHAMPUS agreed to review additional data submitted by a cross-section of RTCs in support of "rebasing" the base period used in determining individual RTC reimbursement rates and the overall RTC limit on per diem charges (capped amount).

(6) Upon reaching a settlement both parties agreed to submit a joint motion to the 10th Circuit Court of Appeals requesting that it vacate the District Court's decision in *NAPTCC* v. *Weinberger*.

On November 3, 1988, NAPTCC submitted RTC cost and staffing data collected by the National Association of Private Psychiatric Hospitals (NAPPH). Upon analysis, the data was found to be inadequate to support NAPTCC's contention that the base period used by OCHAMPUS was not appropriate due to subsequent changes in the severity of the RTC patient case mix. The data was insufficient and riddled with inconsistencies. Since neither the accuracy nor consistency of the data could be verified, it was CHAMPUS' decision not to rebase.

On November 22, 1988, OCHAMPUS staff met with representatives of NAPTCC and their attorney to discuss OCHAMPUS' decision that the data provided by NAPTCC was inadequate to support a change in the base period for computation of RTC reimbursement rates. OCHAMPUS officials provided NAPTCC one final opportunity to submit additional data for consideration. NAPTCC agreed to resolve the inconsistencies in the previous data submission and to provide additional reimbursement information on 6 out of 12 OCHAMPUS designated RTCs.

The submitted data was found, in general, to be representative of a substantial portion of the CHAMPUS RTC population and showed significant increases in core professional staff, in salary costs for those personnel, and in operating costs overall. Although a majority of these cost increases could be accounted for in the update factor applied by OCHAMPUS to the original base period data, it was decided to proceed with the rulemaking to "rebase" the RTC individual rates and payment cap.

Terms of the final rule published in the August 1, 1988, Federal Register (53 FR 28873) went into effect on December 1, 1988, with the understanding that OCHAMPUS would proceed with the