

FDC date	State	City	Airport	FDC No.	SIAP
10/19/95	WY	Riverton	Riverton Regional	FDC 5/5722	VOR or GPS RWY 28, AMDT 8...
10/20/95	LA	Houma	Houma-Terrebonne	FDC 5/5754	VOR/DME RNAV or GPS RWY 36, AMDT 4A...
10/20/95	MD	Salisbury	Salisbury-Wicomico County Regional.	FDC 5/5739	ILS RWY 32 AMDT 5...
10/20/95	NC	Salisbury	Rowan County	FDC 5/5751	VOR or GPS RWY 2, AMDT 5...
10/23/95	IL	Moline	Quad-City	FDC 5/5806	NDB or GPS RWY 9, AMDT 27...
10/26/95	AL	Selma	Craig Field	FDC 5/5892	NDB or GPS RWY 32, AMDT 2A...
10/26/95	AL	Selma	Craig Field	FDC 5/5893	OIL RWY 32, ORIG-B...
10/27/95	IL	Moline	Quad-City	FDC 5/5879	ILS RWY 9, AMDT 29A...
10/30/95	MI	Pellston	Pellston Regional Airport of Emmet County.	FDC 5/5940	ILS RWY 32, AMDT 10...
11/01/95	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/5962	NDB or GPS RWY 5, AMDT 4A...
11/01/95	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/5963	NDB or GPS RWY 1, AMDT 5A...
11/01/95	NV	Las Vegas	McCarran Intl	FDC 5/5975	VOR/DME or GPS RWY 1R ORIG.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960-AE04

Computing Benefit Amounts, Reducing Benefit Amounts, and Filing Annual Reports of Earnings

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our regulations to reflect provisions of sections 307, 308, and 314 of the Social Security Independence and Program Improvements Act of 1994. Section 307 provides that we not modify the computation of the basic social security benefit amount under the windfall elimination provision of the Social Security Act (the Act) for individuals who are entitled to U.S. social security benefits only as result of a totalization agreement between the United States and another country. In addition, section 307 provides that we not modify the computation for an individual who receives a benefit from another country if the benefit is payable only as a result of a totalization agreement between the United States and that country and benefits paid by us do not depend on a totalization agreement. Section 308 removes the modified computation requirement, as well as the requirement to reduce the social security benefits of an insured individual's spouse who is also receiving a benefit based on his or her noncovered government employment, i.e., the government

pension offset provision, for certain individuals who are eligible to receive or are receiving a benefit based on inactive military reserve duty after 1956 and before 1988. Section 314 increases the extended period for a working social security beneficiary to submit a report of earnings.

EFFECTIVE DATE: These regulations are effective November 9, 1995. Since these rules relieve restrictions previously applicable, the 30-day delay in effectuating rules, as provided by 5 U.S.C. 553(d), does not apply.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-8471 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Sections 307, 308, and 314 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. 103-296) amended sections 202, 203, and 215 of the Act. In these final regulations, we are amending sections 404.213, 404.408a, and 404.452 of 20 CFR to reflect those amendments to the Act.

Section 307—Totalization Agreements and the Windfall Elimination Provision

A totalization agreement between the U.S. and another country permits each country to establish entitlement to social security benefits by combining an individual's coverage under the social security systems of both countries, as provided in section 233(a) of the Act. Based on section 215(a)(7)(A) of the Act, the windfall elimination provision, as in effect for social security benefits payable before January 1995, we modified our

computation of your basic benefit amount if: (1) You were entitled to a social security benefit which was based solely on your employment covered by our social security system without regard to work covered by a totalization agreement, as described in §§ 404.1900ff, and you were also entitled to a pension from a foreign country even though it is one with which the U.S. has a totalization agreement; and (2) if your basic social security benefit was based on a combination of U.S. covered employment and foreign employment covered by a totalization agreement and you were also entitled to a benefit based on employment otherwise not covered under the Act, including a benefit from a nontotalization country.

The social security benefit formula is weighted to replace a higher proportion of wages for individuals who worked many years for low wages in covered employment than for workers with high wages. The modified computation under the windfall elimination provision as required by section 215(a)(7)(A) of the Act is intended to eliminate the windfall that would otherwise occur if this weighting were to apply to workers who spent many years in noncovered employment and worked only a few years in covered employment. Under this provision, we use a modified formula, which yields a smaller benefit, to compute social security benefits for workers who first become eligible after 1985 for both social security benefits and a pension based on employment not covered by social security.

The computation of a totalization benefit (see § 404.1918) includes a prorating feature to account for the fact that an individual did not work for an

entire career under the social security system (U.S. or foreign country) that is paying the benefits. Because of this prorating, the weighting advantage intended for workers with low wages has been largely removed from the computation. Consequently, section 307 of Public Law 103–296 amended section 215(a)(7)(A) of the Act to provide that the windfall elimination provision does not apply when we compute a social security totalization benefit. Similarly, section 307 also provides that we will not apply the windfall elimination provision for an individual who is entitled to both a U.S. social security benefit that is not based on totalized credits and to a benefit from a foreign country which is based on a totalization agreement with the United States. As an exception to the latter rule, we will apply the windfall elimination provision if, in addition to the foreign pension, an individual is also entitled to a benefit from another source that is based on employment not covered by U.S. social security, for example, a civil service retirement annuity.

Accordingly, we are amending § 404.213(e) to provide in a new paragraph (7) that we will not apply the modified computation if you are entitled to both U.S. social security benefits based solely on your covered work or self-employment and to benefits from a foreign country under a totalization agreement with the United States. However, this exception will not apply if, in addition, you are also eligible for benefits based on noncovered work, e.g., benefits from a foreign country not based on a totalization agreement with the United States, or noncovered work for a U.S. employer. Additionally, we are providing in a new paragraph (8) that we will not apply the windfall elimination provision if you are entitled to a social security totalization benefit paid by us, whether or not you are entitled to any other benefits. These provisions in paragraphs (7) and (8) are effective for U.S. social security benefits payable after December 1994.

For clarity, we are amending the last sentence of § 404.213(a)(3). Also, we are amending paragraph (f) of § 404.213 to limit the application of that paragraph to entitlement before January 1995.

Section 308—Military Reservists

As required by the government pension offset provisions of sections 202(b)(4), (c)(2), (e)(7), (f)(2), and (g)(4) of the Act, we will usually reduce your social security benefits as the spouse of a retired or deceased insured worker if you are also receiving a monthly benefit based on your noncovered government

employment. These provisions are explained in § 404.408a. Additionally, as required by section 215(a)(7)(A) of the Act and § 404.213(a) of these regulations, we will modify our computation of your basic benefit amount under the windfall elimination provision if you are also eligible after 1985 for a monthly pension based on your noncovered employment. “Noncovered employment” includes U.S. military service on inactive duty training after 1956 and before 1988, as explained in § 404.1019. A pension based on such military service has been the only kind of pension based on military service which caused a reduced benefit under the government pension offset provision or a modified computation under the windfall elimination provision.

Section 308 of Public Law 103–296 exempts entitlement to a payment based wholly on service as a member of a uniformed service as a basis for our modifying your basic benefit amount under the windfall elimination provision or reducing your social security benefits as a spouse under the government pension offset provision. Thus, inactive duty military service, which was not covered before 1988 and was used to determine your noncovered pension payment based wholly on service as a member of a uniformed service, is no longer a basis for our modifying your basic benefit amount or reducing your social security benefits as a spouse. We are, therefore, amending §§ 404.213 and 404.408a to reflect these amendments to the Act.

Section 314—Annual Earnings Report

Section 203(h)(1)(A) of the Act requires certain individuals who are entitled to social security benefits to submit to us a report of their earnings. The report must be submitted to us on or before a specified date, usually April 15 of the year following the year of earnings, which conforms to the due date for filing Federal income tax returns. Before the effective date of section 314 of Public Law 103–296, section 203(h)(1)(A) of the Act further provided that the date for submitting the report may be extended for no more than three months. We are amending § 404.452(f)(1) to change the maximum extended filing period from 3 months to 4 for tax years ending after December 31, 1994, as provided in section 314 of Public Law 103–296.

Regulatory Procedures

Justification for Final Rules Without Proposed Rules

The Social Security Administration follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and prior public comment procedures because such procedures are unnecessary in this case, as explained below.

Sections 307, 308, and 314 of Public Law 103–296 are explicit in their amendments to the Act and allow for no discretionary policy which would require publication of proposed rules with an opportunity for public comments. Since we are merely amending our current regulations to reflect legislatively mandated provisions, we believe it is not necessary to publish proposed rules.

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability

Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: October 30, 1995.
 Shirley S. Chater,
Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts C and E of part 404 of 20 CFR chapter III as follows:

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

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.213 is amended by revising the last sentence of paragraph (a)(3); by adding paragraphs (e) (7), (8), and (9); and by revising paragraph (f) introductory text to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) * * *
 (3) * * * However, for benefits payable for months prior to January 1995, we will not modify the computation of a totalization benefit (see §§ 404.1908 and 404.1918) as a result of your entitlement to another pension based on employment covered by a totalization agreement. Beginning January 1995, we will not modify the computation of a totalization benefit in any case (see § 404.213(e)(8)).

(e) *Exceptions.*
 * * * * *

(7) For benefits payable for months after December 1994, payments by the social security system of a foreign country which are based on a totalization agreement between the United States and that country are not considered to be a pension from noncovered employment for purposes of this section. See subpart T of this part for a discussion of totalization agreements.

(8) For benefits payable for months after December 1994, the computations in paragraph (c) do not apply in the case of an individual whose entitlement to U.S. social security benefits results from a totalization agreement between the United States and a foreign country.

(9) For benefits payable for months after December 1994, you are eligible after 1985 for monthly periodic benefits based wholly on service as a member of a uniformed service, including inactive duty training.

(f) *Entitlement to a totalization benefit and a pension based on noncovered employment.* If, before January 1995, you are entitled to a totalization benefit and to a pension based on noncovered employment that is not covered by a totalization agreement, we count your coverage from a foreign country with which the United States (U.S.) has a totalization agreement and your U.S. coverage to determine if you meet the requirements for the modified computation in paragraph (d) of this section or the exception in paragraph (e)(5) of this section.

* * * * *

3. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.408a is amended by adding paragraph (b)(5) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

* * * * *

(b) *Exceptions.*

* * * * *

(5) If, with respect to monthly benefits payable for months after December 1994, you are receiving a Government pension based wholly upon service as a member of a uniformed service, regardless of whether on active or inactive duty and whether covered by social security. However, if the earnings on the last day of employment as a military reservist were not covered, January 1995 is the earliest month for which the reduction will not affect your benefits.

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§ 404.452 [Amended]

5. Section 404.452 is amended in paragraph (f)(1) by revising “3” to read “4”.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 94N-0452]

RIN 0905-AC48

Canned Fruit Nectars; Revocation of the Stayed Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the standard of identity for canned fruit nectars. This standard has never gone into effect, having been stayed by the filing of objections. In view of the FDA regulations that require declaration of the percentage of juice in beverage products that purport to contain juice and comments in letters from the petitioner for the canned fruit nectars standard and from other interested parties, the agency has concluded that the standard is unnecessary and should be revoked. The revocation of the stayed standard will minimize confusion in the labeling of canned fruit nectars and will facilitate the marketing of these foods.

DATES: Effective November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In the Federal Register of October 1, 1964 (29 FR 13535), FDA published a proposal to establish a standard of identity for canned fruit nectars in § 146.113 (21 CFR 146.113 (formerly 21 CFR 27.126) (42 FR 14302, March 15, 1977)). The proposal responded to a petition filed by the National Cannery Association (now the National Food Processors Association). FDA issued the final regulation adopting the proposed standard in the Federal Register of May 7, 1968 (33 FR 6862). Several organizations filed objections to the standard and requested a hearing, based principally on the minimum soluble solids (Brix) values to be applied to the fruit ingredients of the unconcentrated or reconstituted single-strength fruit nectars. Consequently, FDA published a notice staying the regulation in its entirety in the Federal Register of July 27, 1968 (33 FR 10713), pending