

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing this final rule to correct some inadvertent typographical errors and other minor errors in certain device regulations. FDA intends for these corrections to improve the accuracy of the agency's regulations.

**EFFECTIVE DATE:** March 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Philip Desjardins, Center for Devices and Radiological Health (HFZ-215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240-276-2343.

**SUPPLEMENTARY INFORMATION:**

**I. Highlights of Final Rule**

FDA is making the following changes to correct typographical and other minor errors in certain device regulations:

1. FDA is amending 21 CFR 814.126(b)(1)(iv) to replace "8dd" with "803."

2. FDA is amending 21 CFR 820.198(a)(3) to eliminate a reference to part 804, a part that does not exist.

**II. Environmental Impact**

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**III. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule corrects only typographical errors in existing regulations and does not change in any way how devices are regulated, the agency certifies that the final rule will not have a significant economic impact

on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

**IV. Paperwork Reduction Act of 1995**

FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**V. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

**VI. The Technical Amendments**

This rule corrects certain minor errors in existing regulations. This administrative action is limited to correcting typographical errors and eliminating a reference to a nonexistent Code of Federal Regulations (CFR) part. It makes no changes in substantive requirements.

Because the final rule is an administrative action, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely makes technical administrative changes in the CFR for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

**List of Subjects**

*21 CFR Part 814*

Administrative practice and procedure, Confidential business information, Institutional review board requirements, Medical devices, Medical research, Reporting and recordkeeping requirements.

*21 CFR Part 820*

Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 814 and 820 are amended as follows:

**PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES**

■ 1. The authority citation for 21 CFR part 814 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353, 360, 360c-360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 2. Amend paragraph (b)(1)(iv) of § 814.126 by removing "part 8dd" and adding in its place "part 803".

**PART 820—QUALITY SYSTEM REGULATION**

■ 3. The authority citation for 21 CFR part 820 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

■ 4. Amend paragraph (a)(3) of § 820.198 by removing "or 804".

Dated: March 24, 2006.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 06-3089 Filed 3-30-06; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF STATE**

**22 CFR Part 17**

[Public Notice 5311]

**Overpayments From the Foreign Service Retirement and Disability Fund**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is revising its regulations regarding overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System (FSRDS) to reflect internal Department restructuring and realignment of responsibilities and the

creation of the Foreign Service Pension System (FSPS).

**DATES:** This rule is effective May 1, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [SkipperK@state.gov](mailto:SkipperK@state.gov)

- Mail paper submissions to the Deputy Assistant Secretary for Global Financial Services, Charleston Financial Service Center, P.O. Box 150008, Charleston, S.C. 29415-5008.

Persons with access to the internet may also view this notice by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Nutt Skipper, Office of the Legal Adviser, telephone 202-647-4278.

**SUPPLEMENTARY INFORMATION:** This rule revises the Department of State's regulations regarding overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System (FSRDS) to reflect internal Department restructuring and realignment of responsibilities and the creation of the Foreign Service Pension System (FSPS).

This regulation establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

### Regulatory Analysis

#### *Administrative Procedures Act*

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)).

#### *Regulatory Flexibility Act*

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandated Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### *Executive Order 12866*

The Department does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

#### *Executive Order 12988*

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13132*

This regulation will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department determines that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

#### *Executive Order 12372*

This regulation does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs.

#### *Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

#### **List of Subjects in 22 CFR Part 17**

Administrative practice and procedure, Annuities, Claims, Debts, Foreign service, Government employee, Hearing and appeal procedures, Pensions, Retirement.

■ In consideration of the foregoing, the State Department amends Title 22 of the Code of Federal Regulations, by revising part 17 to read:

#### **PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FSPS)**

Sec.

- 17.1 General.
- 17.2 Conditions for waiver of recovery of an overpayment.
- 17.3 Fault.
- 17.4 Equity and good conscience.
- 17.5 Financial hardship.
- 17.6 Ordinary and necessary living expenses.
- 17.7 Waiver precluded.
- 17.8 Burdens of proof.
- 17.9 Procedures.

**Authority:** 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301-07.

#### **§ 17.1 General.**

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

#### **§ 17.2 Conditions for waiver of Recovery of an Overpayment.**

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived

pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be waived pursuant to section 4071(b) of title 22, United States Code and section 8470(b) of title 5, United States Code when the individual is without fault and recovery would be against equity and good conscience.

(c) When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

### § 17.3 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Department of State or other agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which he/she should have known to be material; or

(3) Whether he/she accepted a payment which he/she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by the Department of State or a Federal agency may mitigate against finding fault if one or more contributed to his or her submission of an incorrect statement, a statement which did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

### § 17.4 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) It would cause financial hardship to the person from whom it is sought;

(2) The recipient of the overpayment can show (regardless of his or her

financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

(b) [Reserved]

### § 17.5 Financial hardship.

(a) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a completed Statement of Financial Status, duly sworn by the recipient of the overpayment.

(b) Financial hardship may be deemed to exist in, but not limited to, those situations where the recipient from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(1) Considerations. Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(i) The individual's financial ability to pay at the time collection is scheduled to be made.

(ii) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the individual.

(c) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness, rather primary emphasis shall be placed upon the individual's liquid assets and current income in making such determinations.

### § 17.6 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the individual is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

### § 17.7 Waiver precluded.

(a) Waiver of an overpayment cannot be granted when:

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

(b) [Reserved]

### § 17.8 Burdens of proof.

(a) *Burden of the Department of State.* The Bureau of Resource Management,

Department of State, must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of individual.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment in the recovery schedule.

### § 17.9 Procedures.

(a) *Notice.* The Bureau of Resource Management, Department of State, shall give written notification to any individual who has received an overpayment promptly by first-class mail to the individual at the individual's most current address in the records of the Bureau of Resource Management. The written notice shall inform the individual of:

(1) The amount of the overpayment;

(2) The cause of the overpayment;

(3) The intention of the Department to seek repayment of the overpayment,

(4) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs;

(5) The applicable standards for the imposing of interest, penalties, and administrative costs;

(6) The department's willingness to discuss alternative payment arrangements and how the individual may offer to enter into a written agreement to repay the amount of the overpayment under terms acceptable to the Department; and

(7) The name, address and telephone number of a contact person within the Bureau of Resource Management. The written notice also shall inform the individual of their right to contest the overpayment, their right to request a waiver of recovery of the overpayment, and the procedures to follow in case of such contest or request for waiver of recovery. The notification shall allow at least 30 days from its date within which the individual may contest in writing the overpayment or request a waiver of recovery, including with their submission all evidence and arguments in support of their position.

(b) *Administrative File.* The Bureau of Resource Management will prepare an administrative file as a basis for determination in each case where an individual contests a claim to recover overpayment or requests waiver of recovery of the overpayment. On the basis of the administrative file, the Chief Financial Officer or his or her delegate, shall make the final administrative determination.

(c) *Additional Information.* At any time before the final administrative decision, the Department may request the individual to supplement his or her

submission with additional factual information and may request that the individual authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations. If the individual, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(d) *Decision and right of appeal.* The final administrative decision shall be reduced to writing and sent to the individual. If the decision is adverse to the individual, the notification of the decision shall include a written description of the individual's rights of appeal to the Foreign Service Grievance Board. The Foreign Service Grievance Board shall consider any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR part 901.

Dated: February 1, 2006.

**Henrietta H. Fore,**

*Under Secretary for Management,  
Department of State.*

[FR Doc. 06-3136 Filed 3-30-06; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 203

[Docket No. FR-4916-F-02]

RIN 2502-AI20

#### Change in Default Reporting Period

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations under the single-family mortgage insurance program that require mortgagees to report the status of all single-family mortgages insured by HUD that are 90 or more days delinquent. The rule requires mortgagees to report to HUD mortgages that are 30 or more days delinquent on the last day of the month. The Department believes that the rule would, among other things, provide HUD with more recent delinquency information. The receipt of more up-to-date information will enable HUD to better monitor its loss mitigation program and strengthen the soundness of the Federal Housing Administration (FHA) mortgage insurance funds. This final rule follows publication of a January 21, 2005, proposed rule, and

takes into consideration the seven public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without substantive change.

**DATES:** *Effective Date:* May 1, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Joseph McCloskey, Director, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410-8000; telephone (202) 708-1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Background—The January 21, 2005, Proposed Rule

On January 21, 2005 (70 FR 3266), HUD published a proposed rule to revise the regulations under part 203 that require mortgagees to report the status of all single-family mortgages insured by HUD that are 90 or more days delinquent. The proposed rule indicated that the revision to the regulations would require mortgagees to report to HUD mortgages that are 30 or more days delinquent on the last day of the month.

The January 21, 2005, proposed rule contained a detailed rationale for the proposed revision. HUD stated in the proposed rule that the revisions to the regulations would bring FHA's requirements closer to Fannie Mae, Freddie Mac, the Mortgage Bankers Association, and industry standards for delinquency reporting requirements. As such, FHA would be in a better position to integrate itself, should it choose to do so, into a single platform for industry-wide default data reporting. Additionally, mortgagees should better understand references to payments due and unpaid rather than being required to count days from the due date.

The proposed rule further stated that HUD also believes the revisions would contribute to FHA's efforts in protecting the financial integrity of the FHA Mutual Mortgage Insurance Fund. The effect of the revisions is that the Department would receive more recent and timely delinquency and default information, thereby increasing FHA's ability to forecast default volume, future defaults, and potential insurance losses. More timely information, the proposed rule concluded, would also enable FHA to monitor better its loss mitigation program. Monitoring of the loss

mitigation program is important to FHA because FHA insures 100 percent of a mortgage loan as compared to private mortgage insurers, which generally insure only 10 to 20 percent of a loan.

#### II. This Final Rule

This final rule follows publication of the January 21, 2005, proposed rule, and takes into consideration the seven public comments received in response. The public comment period on the rule closed on February 22, 2005. Comments were received from a state housing finance agency, a state housing authority, a trade association, and mortgage companies. After careful consideration of the public comments, HUD has decided to adopt the January 21, 2005, proposed rule with one minor change. For clarification purposes, the clause "or that were reported as delinquent the previous month" is being added to each section. This makes it clear that mortgages previously reported as delinquent or in default the previous month must be reported again in the latest reporting month. Except for that clarification, the proposed rule and this final rule are substantively identical.

#### III. Discussion of Public Comments Received on the January 21, 2005, Proposed Rule

*Comment: Expanded default reporting would provide minimal benefit.* The commenter wrote that the proposal would significantly increase the number of reportable events each month. The majority of delinquent loans never get to 90-day delinquent status, thus additional data will provide minimal benefit to HUD in terms of determining potential insurance losses.

*HUD Response.* HUD acknowledges that requiring mortgagees to report 30- and 60-day delinquencies will result in an increase in the total volume of reportable events. However, most mortgage servicing computer systems are capable of providing this additional data and are in fact currently providing similar data on 30-day plus delinquencies to trade associations, such as the Mortgage Bankers Association, to various private investors and insurers, and to the housing-related Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac.

HUD has expanded and updated the capacity of its own system to accommodate the anticipated increase in overall data volume as well as status and default code changes. These changes were implemented to bring the data requested by HUD in line with what Fannie Mae and Freddie Mac currently require. One of the previous industry complaints was that HUD's